

*Rolf Hechler
Mayor*



*Ingo Hoeppepner
Commissioner*

*Destiny Mitchell
Mayor Pro-Tem*

*Chaz M. Glines
Commissioner*

*Amanda Forrister
Commissioner*

*505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.gov*

*Gary Whitehead
City Manager*

REGULAR MEETING

THE REGULAR MEETING OF THE CITY COMMISSION OF THE CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO, TO BE HELD IN THE COMMISSION CHAMBERS, 405 W. 3RD ST., ON WEDNESDAY, FEBRUARY 25, 2026; TO START AT 4:00 P.M.

A. CALL TO ORDER

B. INTRODUCTION

1. ROLL CALL

Hon. Rolf Hechler, Mayor
Hon. Destiny Mitchell, Mayor Pro-Tem
Hon. Amanda Forrister, Commissioner
Hon. Ingo Hoeppepner Commissioner
Hon. Chaz Glines, Commissioner

2. SILENT MEDITATION

3. PLEDGE OF ALLEGIANCE

4. APPROVAL OF AGENDA

5. COMMISSION COMMENTS

6. STAFF COMMENTS

C. PRESENTATIONS

1. Joint Powers Authority Structure and Regional Collaboration. Patrick Pharris, PreReal Investments

D. PUBLIC HEARINGS (5 Minute Rule Applies)

1. Public Hearing/Discussion/Action: Public Hearing and Final Adoption of Ordinance No. 771 amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals. City Manager Whitehead

E. PUBLIC COMMENT (3 Minute Rule Applies)

F. CONSENT CALENDAR

1. Purchase report of items between \$20,000 and \$59,999.00

G. ORDINANCES/RESOLUTIONS/ZONING

1. Discussion/Action: Resolution No. 41 25/26 Budget Adjustment Request. Jocelyn Holguin, Chief Financial Officer

H. NEW BUSINESS

1. Discussion/Action: Approval of Purchase Requisitions over \$60,000. Jocelyn Holguin, Chief Financial Officer
 - a. Wilson & Company Inc. – Cantrell Dam Engineering Construction Admin Services
 - b. J & H Services Inc.
2. Discussion/Action: Change Order – Shovel Ready Water Project. Assistant City Manager Alvarez
3. Discussion/Action: Approval of Biennial Memorandum of Understanding (MOU) between MainStreet and the City of T or C. City Manager Whitehead
4. Discussion/Action: Approval of a Professional Services Agreement between the City and Jesse Cole 4x4 Services and Consults. City Manager Whitehead

I. ADJOURNMENT

The meeting will be streamed through YouTube Live at <http://www.youtube.com/@CityofTorC>.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting please contact the City Clerk's Office, at 505 Sims Street, Truth or Consequences, New Mexico 87901, phone (575) 894-6673 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the City Clerk's Office if a summary or other type of accessible format is needed.

NEXT REGULAR CITY COMMISSION MEETING MARCH 11, 2026 AT 9:00 A.M.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: C.1

SUBJECT: Joint Powers Authority Structure and Regional Collaboration.
DEPARTMENT: City Clerk's Office
DATE SUBMITTED: February 19, 2026
SUBMITTED BY: Angela A. Torres, Clerk-Treasurer
WHO WILL PRESENT THE ITEM: Patrick Pharris, PreReal Investments

Summary/Background:

This is a Presentation on a Joint Powers Authority Structure and Regional Collaboration. The presentation will explain the purpose, structure, and functionality of the proposed Joint Powers Authority and describe how it is intended to operate as a collaborative public-sector entity formed by Sierra County and its participating municipalities. The presentation will also explain how the Joint Powers Authority would coordinate with the Sierra Gateway Alliance, a New Mexico 501(c)(6), to establish a structured public-private partnership. The presenter will be prepared to address governance, preservation of local authority, financial oversight, and compliance with applicable state and federal requirements. The presenter will also be prepared to discuss how this framework can support coordinated economic development, tourism, and infrastructure initiatives that benefit the region, without the Joint Powers Authority or its member entities incurring incremental operational costs.

Recommendation:

Presentation Only.

Attachments:

- Presentation

Fiscal Impact (Finance): N/A

\$0.00

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☐ Department Director

Reviewed by: ☒ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☒ City Manager

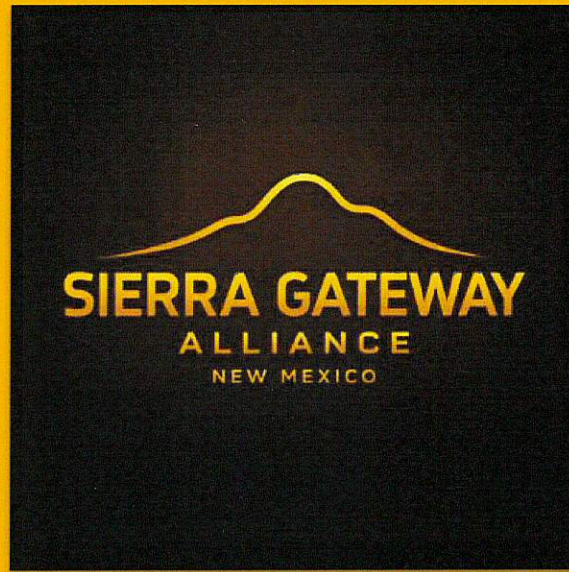
CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 2-25-26



“The best way to predict the future is to create it.”

— Peter Drucker

NEW REGIONAL JOB CREATION 2026 to 2031

Overview

- 2026 – 2031: 61,200 to 112,500 new jobs in southern New Mexico and western Texas,

Copper Flat Mine

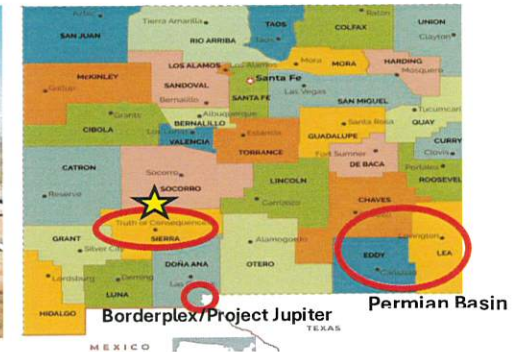
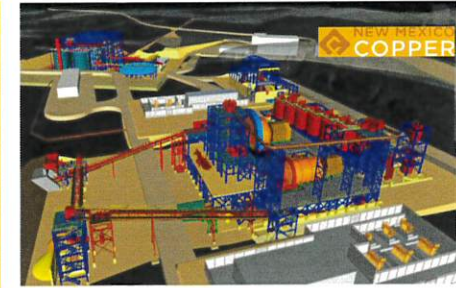
- 2027 – 2029: Expected to create and support roughly 1,200 to 2,500 jobs during construction and early operations.

Borderplex & Project Jupiter

- 2026 – 2031: Expected to create and support between 20,000 and 45,000 jobs.

Permian Basin Oil Discovery in New Mexico

- 2026 – 2031: Expected to create and support 40,000 to 65,000 new jobs.



TOURISM EXPANSION – IN SIERRA COUNTY

2027 - 2031

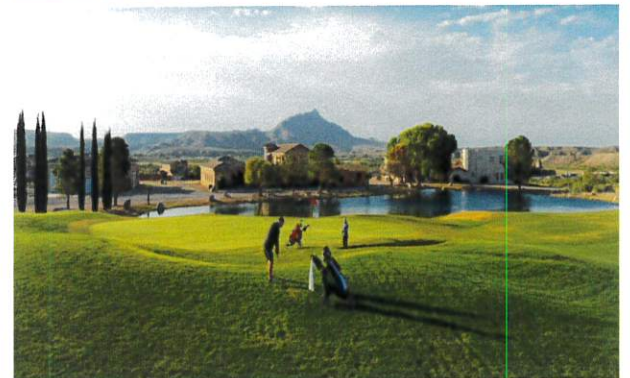
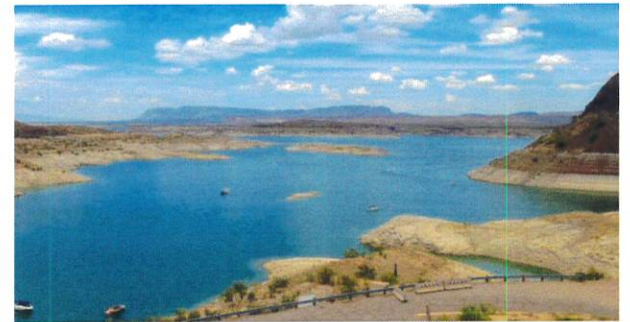
- Virgin Galactic is expected to generate 41,500 hotel room nights per year with one (1) flight per week.

2026 – 2031

- Borderplex and Project Jupiter are projected to produce 15,000 to more than 70,000 leisure trips annually to Sierra County.

2026 – 2031

- Permian Basin discovery is anticipated to generate 50,000 to 100,000 additional visitors to Sierra County.



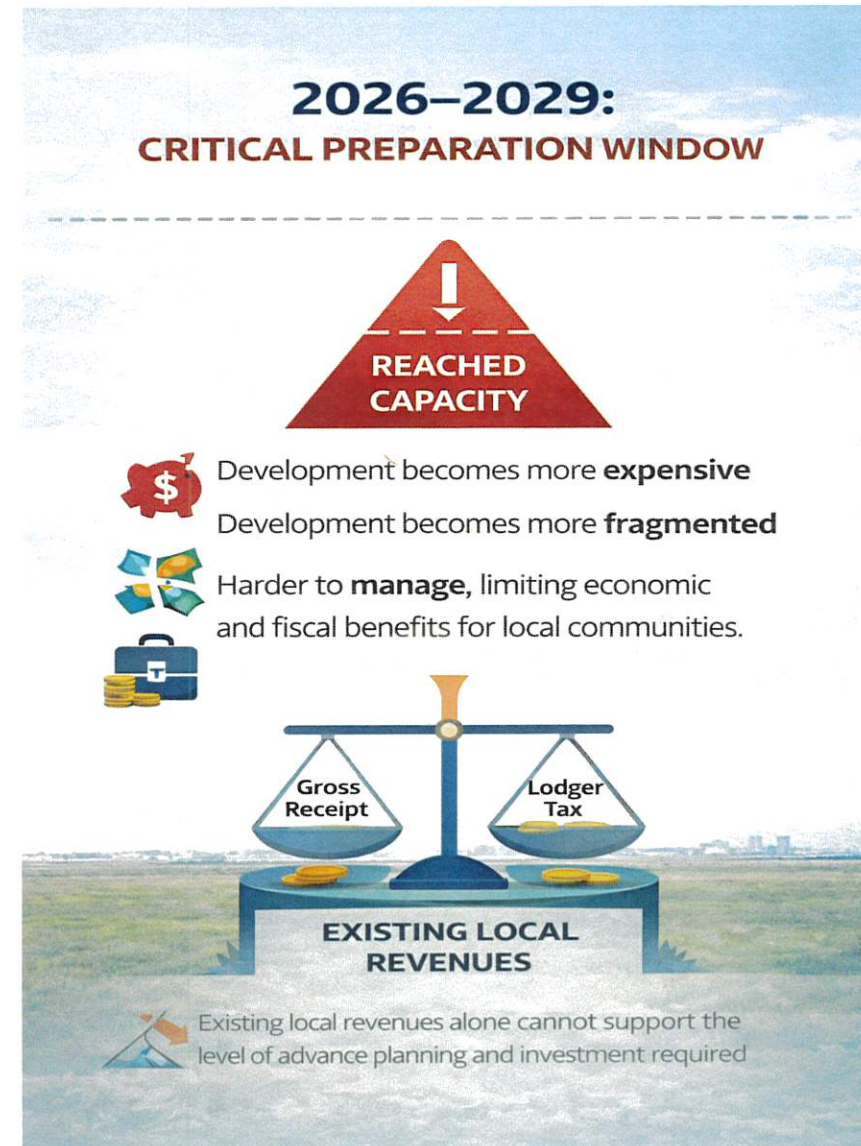
WHAT IS NEEDED NOW — AND WHY

The 2026–2029 window is critical to prepare before capacity is reached.

The next three years represent the only realistic opportunity to plan, fund, and build ahead of demand, rather than reacting after growth strains housing, infrastructure, tourism services, and quality of life.

Once regional capacity is reached, development becomes more expensive, more fragmented, and harder to manage, limiting long-term economic and fiscal benefits for local communities.

Existing local revenues (Gross Receipt Tax and Lodger Tax) alone cannot support the level of advance planning and investment required to respond to this scale of regional growth.



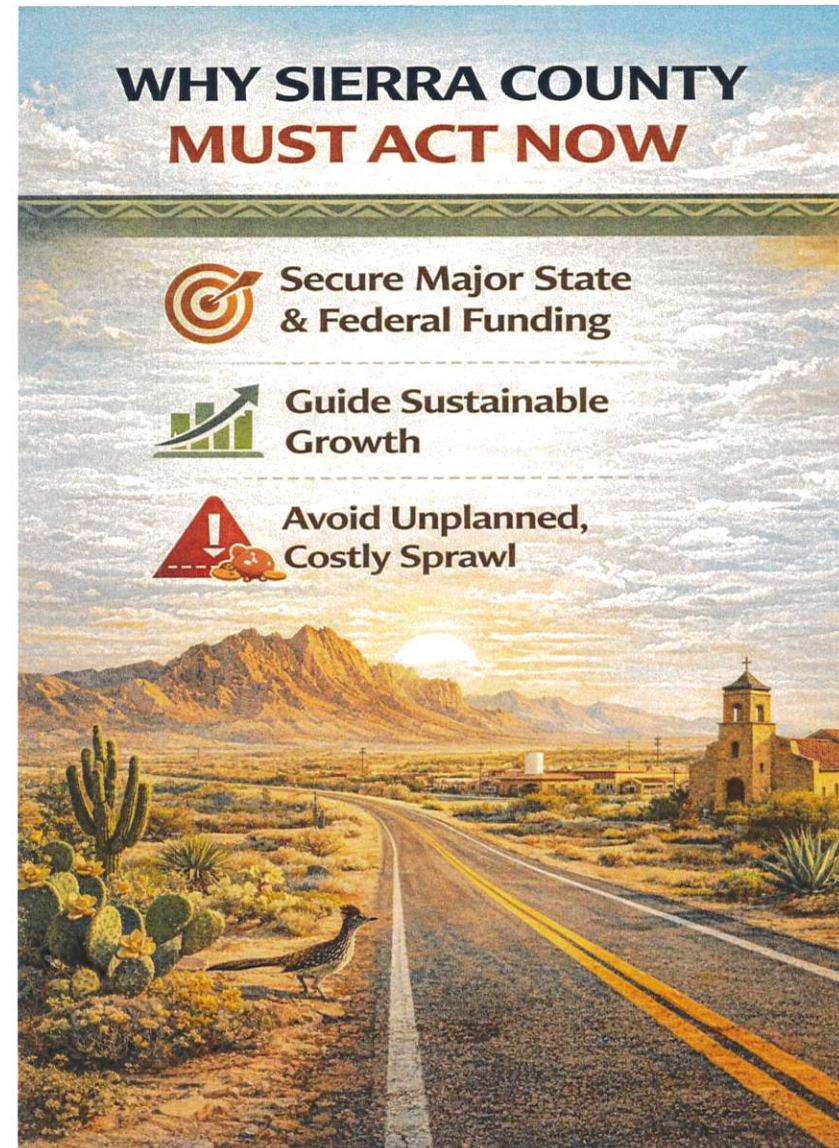
WHAT IS NEEDED NOW — AND WHY

Action now allows Sierra County to shape outcomes instead of absorbing impacts.

Acting now helps Sierra County go after bigger state and federal funding, instead of scrambling for smaller grants later.

Planning early lets the county manage growth in a way that supports tourism, creates jobs, grows local tax revenue, and protects the character of our communities.

Waiting increases the chance that growth happens without a plan, leading to missed funding and higher long-term costs.

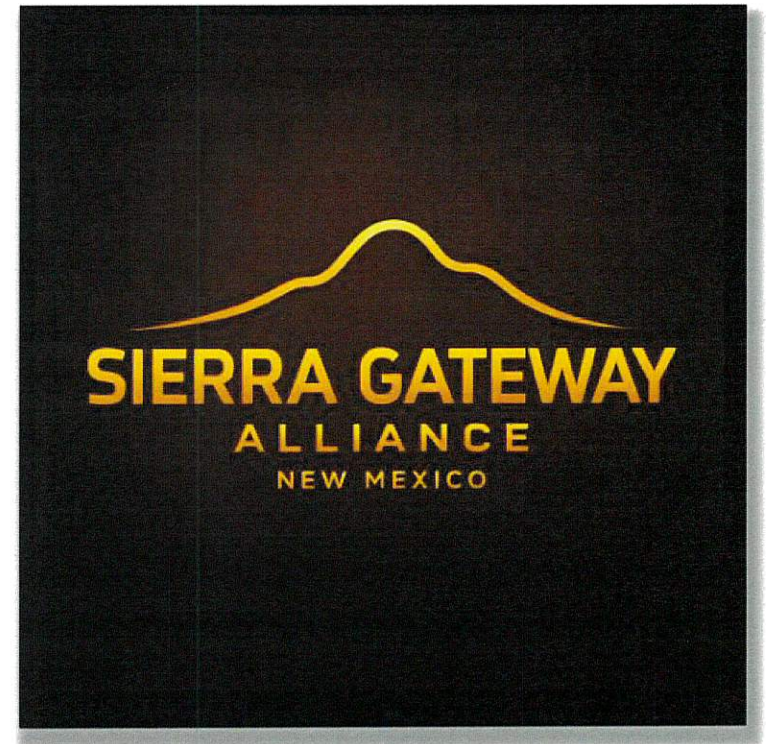


THE SOLUTION

The Sierra Gateway Alliance is planned to be a unified countywide public-private alliance that operates on behalf of Sierra County and its municipalities.

It is an entity that provides the scale, credibility, and flexibility to partner with state and federal agencies, as well as the private sector, to secure larger, higher-impact investments.

It is an entity that enables Sierra County to accelerate county-wide planning and implementation now, preparing the community for growth before demand reaches full capacity.



WHAT IS THE SIERRA GATEWAY ALLIANCE?

A non-profit that gives the county and cities a shared tool to work together, attract investment, and get things done ... without expanding government.

Provides a practical, coordinated way to manage growth and align public goals with private-sector expertise.

Focused on building a strong, year-round economy while protecting the character and quality of life of Sierra County.

Designed to support local governments by helping plan, fund, and deliver projects that benefit residents, businesses, and visitors alike.



WORK TOGETHER,
ATTRACT INVESTMENT • **GET THINGS DONE**
WITHOUT EXPANDING GOVERNMENT

WHAT DOES THE SIERRA GATEWAY ALLIANCE DO?

Partners with state and federal agencies and the private sector to secure larger, higher-impact investments.

Coordinates and expedites the planning, funding, and delivery of tourism, economic development, housing, workforce, and infrastructure projects.

Aligns public priorities with private-sector expertise to guide growth and decision-making.

Partner.
Coordinate. Accelerate.



Expedite Tourism, Economic Development, Housing, Workforce, and Infrastructure Projects



Align Public Priorities with Private-Sector Expertise

WHY IS THE SIERRA GATEWAY ALLIANCE NEEDED NOW?

Growth and investment are accelerating, increasing demand for jobs, housing, tourism, infrastructure, and services.

Existing local resources and government structures are not built to respond to this scale or speed of growth on their own.

Acting now allows the county to plan, fund, and build ahead of demand, instead of reacting after capacity is reached & costs rise.

The Alliance takes action that moves faster and at a scale no single city or jurisdiction can achieve alone.

Preparing now protects quality of life, strengthens long-term Gross Receipts and Lodgers Tax revenues, and reduces administrative burden on local governments, businesses, and residents.

The Sierra Gateway Alliance helps Sierra County get ahead of growth while there is still time to plan smartly, invest wisely, and protect the community's future.

**PREPARE NOW.
MANAGE GROWTH.
PROTECT FUTURE.**



STRUCTURE #1 of 2
Joint Powers Authority +
The Sierra Gateway Alliance



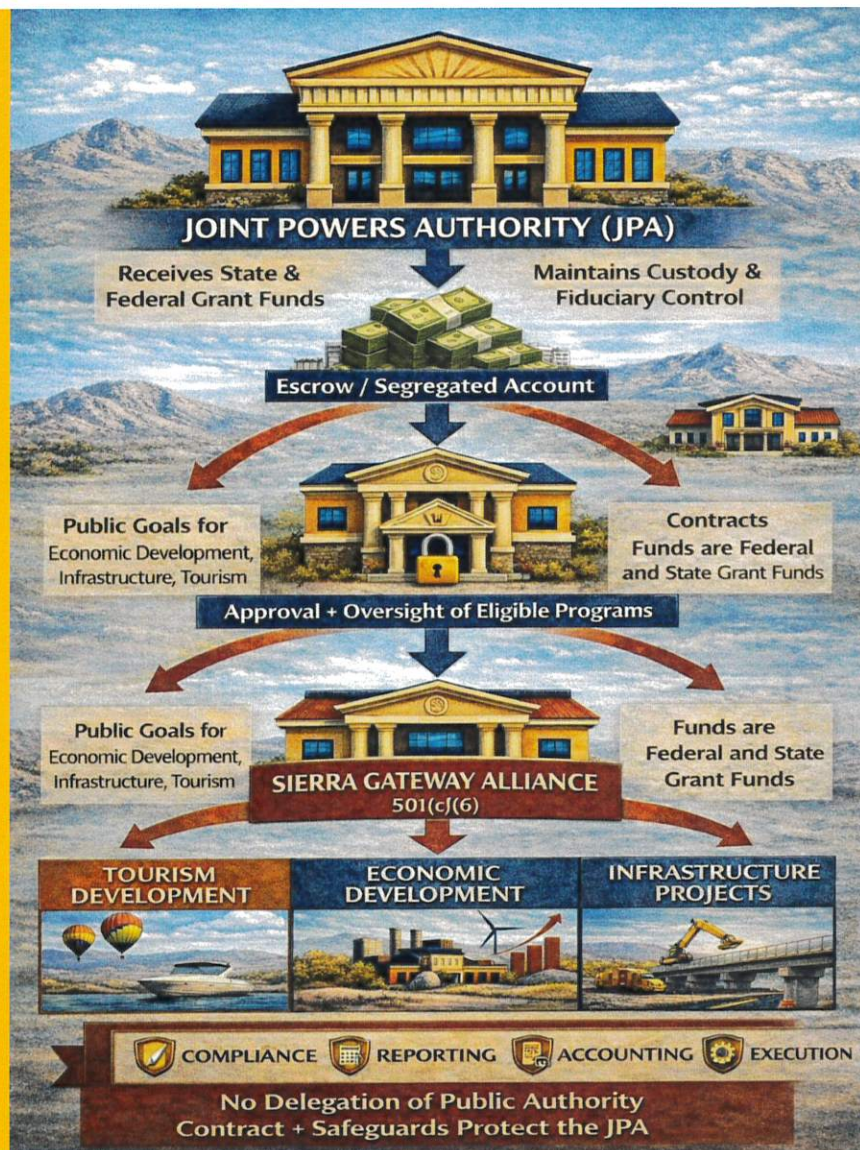
STATE OF NEW MEXICO



**U.S. GOVERNMENT
FEDERAL PROGRAMS**



JOINT POWERS AUTHORITY



The Joint Powers Authority serves as the public fiduciary, receiving state and federal grant funds into a segregated escrow account.

The JPA retains a reasonable administrative fee, consistent with national grant management practices, to cover fiduciary oversight, compliance reporting, accounting, audit support, and legal review.

The balance of grant funds is allocated to the Sierra Gateway Alliance (501(c)(6)) solely for the strategic development and implementation of approved programs focused on tourism, economic development, and supporting infrastructure initiatives.

Program authority is exercised collaboratively, with the JPA and the Sierra Gateway Alliance working together to identify and prioritize goals and programs that support a long-term, year-round economy, with all activities conducted in compliance with applicable laws and grant requirements.

Funds are released to the Sierra Gateway Alliance and subject to performance, reporting, and compliance requirements.

Built-in safeguards, including insurance, bonding or completion assurances, indemnification provisions, and reversion of unspent funds, protect public dollars.

County and municipal governments do not have access to Alliance-managed funds, except for the JPA's approved administrative fee.

County and municipal governments may independently pursue grants, provided such grants do not conflict with or duplicate programs planned or implemented by the Sierra Gateway Alliance.

STRUCTURE #2 of 2
The Sierra Gateway Alliance +
County & Cities, No JPA

SIERRA GATEWAY ALLIANCE AS THE LEAD ENTITY (NO JPA)

SIERRA GATEWAY ALLIANCE
501(c)(6)

Secures State, Federal, Other Funding & Implements Programs

Federal

State

Other

Serve as Rotating Public Fiduciary

Truth or Consequences

SIERRA COUNTY

Elephant Butte

SIERRA GATEWAY ALLIANCE

TOURISM
DEVELOPMENT

ECONOMIC
DEVELOPMENT

INFRASTRUCTURE

Sierra Gateway Alliance - Lead Entity (No JPA)

The Sierra Gateway Alliance is a 501(c)(6) nonprofit that leads the region for tourism, economic development, and supporting infrastructure initiatives.

The Sierra Gateway Alliance is responsible for identifying opportunities and securing state, federal, and private-sector funding for regional tourism economic development and supporting infrastructure programs.

Sierra County, the City of Truth or Consequences, and the City of Elephant Butte become members of the Alliance - annual membership fee is required.

For state and federal grant-funded projects, Sierra County or one of the participating municipalities serves as the public fiduciary on a rotating, project-by-project basis.

The designated public entity receives grant funds into a segregated escrow account and retains an administrative fee, consistent with national grant management practices, to cover fiduciary oversight, compliance reporting, accounting, audit support, and legal review.

After fiduciary processing, grant funds are released to the Sierra Gateway Alliance solely for the strategic development and implementation of approved programs focused on tourism, economic development, and supporting infrastructure initiatives.

SIERRA GATEWAY ALLIANCE Lead Entity (No JPA)



SIERRA GATEWAY ALLIANCE
SOLICITOR

Collaborative board ensures legal, compliant, efficient
use of public funds to develop long-term, year-
round economy



Truth or Consequences

SIERRA COUNTY

Elephant Butte

Municipal
Representation



Independent Municipal Grants

The County and municipalities may independently pursue
published grants, provided that such grants do not
conflict with Sierra Gateway Alliance Programs



Sierra Gateway Alliance - Lead Entity (No JPA)

Program authority is exercised collaboratively through the Sierra Gateway Alliance Board of Directors, which includes one representative from each participating municipality but does not permit municipal representatives to hold a majority.

Programs are prioritized to support a long-term, year-round economy and are carried out in compliance with applicable laws and grant requirements.

Funds released to the Alliance are subject to clear contractual performance, reporting, and compliance requirements. Safeguards including insurance, bonding or completion assurances, indemnification provisions, and reversion of unspent funds protect public dollars.

Counties and municipalities may independently pursue grants, provided such grants do not conflict with or duplicate programs planned or implemented by the Sierra Gateway Alliance.

County and municipal governments do not have access to Alliance-managed funds, except for the approved administrative fee retained by the designated public fiduciary.

PRIORITIES & TIMING

PRIORITIES: THE SIERRA GATEWAY ALLIANCE ACTION FRAMEWORK

Establish a public private alliance framework.

Form the implementing entity (SGA Lead or SGA + JPA)

Identify and prioritize funding, infrastructure, tourism, and economic development needs.

Develop a five-year strategy and implementation plan
Coordinate state, federal, and private funding to combine grants and create new funding solutions when existing programs fall short.

Activate grant development, administration, and compliance capacity for standard state and federal funding programs
Implement and manage approved programs.

Measure outcomes and refine programs as needed to improve performance, alignment, and results.

How It Works



Build the Partnership

Establish a public-private partnership framework.



Create the Delivery Structure

Form the implementing entity (SGA Lead or SGA + JPA).



Set Regional Priorities

Identify and prioritize funding, infrastructure, tourism, and economic development needs.



Plan for Impact

Develop a five-year strategy and implementation plan.



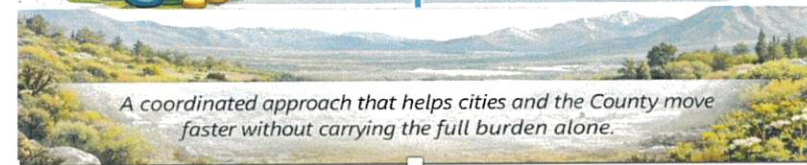
Assemble and Align Funding

Coordinate state, federal, and private funding to combine grants and create new funding solutions when existing programs fall short.



Deliver, Measure, Improve

Implement and manage programs, track results, and refine efforts to improve outcomes.

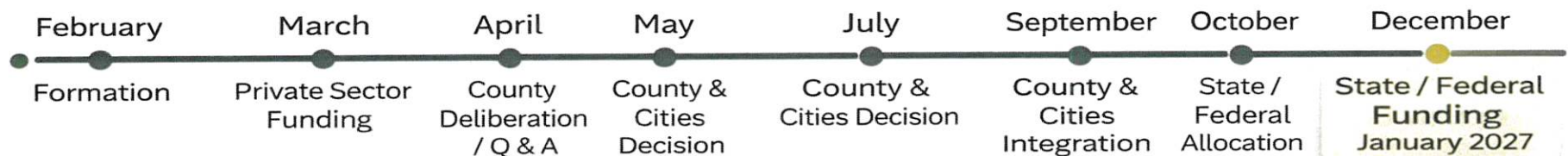


A coordinated approach that helps cities and the County move faster without carrying the full burden alone.

Sierra Gateway Alliance: Implementation Timeline Options

(Estimated)

SGA Lead (No JPA)



SGA Lead (With JPA)



Both paths lead to full activation. The difference is speed, complexity, and timing of state and federal funding.

THANK YOU

Contact

Patrick Pharris

Executive Vice President

External Affairs and Strategic Development

PreReal Investments

(702) 491-7464

Patrick@PreRealInvestments.com



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: D.1

SUBJECT: Discussion/Action: Public Hearing and Final Adoption of Ordinance No. 771 amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals.

DEPARTMENT: Police Department

DATE SUBMITTED: February 19, 2026

SUBMITTED BY: Tyler Knull

WHO WILL PRESENT THE ITEM: City Manager Whitehead

Summary/Background:

After several months of meetings, workshops, and public input, we are confident in moving forward with the final public hearing and adoption of Ordinance No. 771, amending Chapter 3 of the Municipal Code of Ordinances pertaining to animals.

Recommendation:

Public Hearing and Final adoption of Ordinance No. 771

Attachments:

- Proposed Ordinance No. 771
-

Fiscal Impact (Finance): N/A

[Click here to enter text.](#)

Legal Review (City Attorney): Yes

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☒ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. 771-

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agenda 2-25-26

ORDINANCE NO. 771

AN ORDINANCE OF THE CITY OF TRUTH OR CONSEQUENCES, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF TRUTH OR CONSEQUENCES, BE AMENDED BY AMENDING CHAPTER 3 PERTAINING TO ANIMALS.

Chapter 3. ANIMALS shall be amended in its entirety to read as follows:

Chapter 3 - ANIMALS

ARTICLE I. GENERAL PROVISIONS

SEC. 3-1. TITLE AND INTENT.

This Chapter shall be known and may be cited as the Truth or Consequences Animal Control Ordinance. It is the intent of the City Commission that enactment of this chapter will protect animals from neglect and abuse, protect residents from nuisance and injury, promote the health, safety, and welfare of the residents and animals, assist in providing humane population control of animals, reunite animals with their owners, finance the functions of licensing and recovery of said animals, and assist in providing housing for animals in an Animal Shelter.

It is further the intent of the City Commission to promote responsible pet ownership and to encourage education and voluntary compliance with the provisions of this Chapter and ensure that enforcement is applied in a fair, effective and humane manner.

(Ord. No. 725, 2-9-22)

SEC. 3-2. DEFINITIONS.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandonment of animals means to desert and/or to relinquish the supervision or care of any animal regardless of age or condition on one's premises or on property other than one's own without permission.

Adoption means to take by choice and assume responsibility for proper care in accordance with this Chapter.

Adequate food means the access to and provision of uncontaminated, edible, nutritious food, which is of adequate quantity as to maintain the normal weight and condition of a healthy animal.

Adequate living area means adequate space, shade, and shelter suitable to the age, size, species and breed of animal.

Adequate shade means provision of and access to either man made or natural shade suitable for species, age, condition, size and type of each animal.

Adequate shelter means A structurally sound, adequately ventilated, weatherproof structure that is comprised of non-toxic materials and interior floors that minimize injury and discomfort to the Animal. The structure must be clean and of a suitable size as to limit overcrowding by properly accommodating the specific Animal. The structure must protect the Animal from extreme conditions. The Animal must be able to lie down fully with limbs and tail outstretched and rise to its feet, in a natural manner, consistent with the Animal's species. An Adequate Shelter must be within a Secure Fence.

Adequate space to prevent overcrowding or ***Adequate Space*** means having sufficient space to allow animals restrained together to be able to move freely, turn around and lie down with tail and limbs outstretched.

Adequate water means constant access to a supply of unfrozen potable water in sufficient amount as to maintain good health

Alter or ***Alteration*** means to render an animal permanently sterilized and incapable of reproduction.

Animal means any living nonhuman mammal, bird, reptile, or amphibian including bats, Companion Animals, Companion Birds, Domestic Animals, Exotic or Wild Animals, Livestock, pigeons, porcupines, Poultry, prairie dogs, rabbits and skunks. For the purpose of this article, insects and arachnids are not included in the definition of animal.

Animal Shelter or ***shelter*** means any pound, lot, premises, and/or building maintained by the City for the care and custody of animals. This shall include any private shelter contracted or permitted by the City for the purpose of maintaining care and custody of animals.

Animal Shelter Staff means a person or group of people employed by the City to work at the Animal Shelter and charged with maintaining care and custody of animals.

Animal Control Officer or ***A.C.O*** means any person designated by the Chief of Police or City Manager to enforce animal control laws, orders, ordinances and regulations.

Animal fighting paraphernalia means equipment that any reasonable person would ascertain is used for animal fighting purposes which includes, but is not limited to:

1. Instruments designed to be attached to the leg of a bird, such as a boxing gloves, knife, gaff, or other sharp instrument.
2. Items to train and condition animals to fight including, but not limited to, hides or other material used as hanging devices to strengthen and/or condition dogs, wooden sticks or handles used to pry open dog's jaws, performance enhancing drugs or substances, or food or water additives.

Auction means any place or facility where animals are regularly bought, sold or traded, except for those facilities otherwise defined in this chapter. This definition does not apply to individual sales of animals by owners.

Bait animal means any animal used to train and/or condition other animals to fight and are exposed to attack by other animals used in fighting or to make the attacking animal more confident and aggressive.

Basic Grooming means examination, attention and acts reasonably necessary to maintain the eyes, ears, beaks, hooves, feet, coat and skin of an Animal in healthy condition. Basic Grooming also obligates an Owner to provide any and all materials an Animal requires for self-grooming. Basic Grooming does not include acts to maintain appearance only.

Basic Medical Care means reasonable medical care required by the species, including periodic examinations by a veterinarian, prompt Veterinary care when required, age and species appropriate Vaccinations, Basic Grooming and internal and external Parasite Control where appropriate.

Bite means any puncture, tear, scratch or wound of the skin inflicted by the teeth of an animal.

Bona Fide Animal Show means an exhibition approved by the City Manager or City Manager's designee of Companion Animals, Companion Birds or Horses in competition for prizes or awards that does not include sales or fighting.

Breeder means any person involved in the controlled breeding of animals. Breeders are subject to City of Truth or Consequences Kennel Permit requirements.

Business Days or **Working Days** means any day in which normal business operations are conducted. Typically, Monday through Friday and not including Public Holidays.

Cage means a structure for confining birds or animals, enclosed on at least one side by a grating of wires or bars that lets in air and light.

Calander Days means every day on the calendar including weekends and holidays.

Canine hybrid means any offspring which results from the breeding of a domestic species or breed of canine with any wild species or breed of canine, such as wolf or coyote. Any animal which at any time has been or is advertised, or otherwise described or represented as a canine hybrid, wolf-dog, or wolf hybrid by its owner to an Animal Control Officer, Veterinarian, Police Officer, or Official of the Department of Health shall be considered a canine hybrid for the purpose of this chapter. An animal shall not be classified to be a canine hybrid based strictly on its appearance.

Care means responsibility for or attention to health, well-being, and safety.

Cat means belonging to the species *Felis Catus*.

Collar means a strap made of leather or other strong material or a harness that is worn around the neck/torso of an animal to which a current rabies vaccination and city animal registration tag can be affixed.

Community Cat means any free-roaming cat that may be cared for by one or more residents of the immediate area who is/are known or unknown; a community cat may or may not be feral. Community cats shall be distinguished from other cats by being sterilized and ear tipped;

community cats are exempt from licensing, limits, tags, stray and at-large provisions of this ordinance and maybe exempt from other provisions directed toward owned animals.

Community Cat Caregiver means A person who provides care, including food, shelter or medical care to a community cat, while not being considered the owner, custodian, harbinger, controller or keeper of a community cat or to have care or charge of a community cat. Caregivers must make every effort to minimize the impact on local wildlife, and feed the proper quantity of food for the number of cats. Community cat caregivers may redeem community cats from the shelter without proof of ownership.

Companion Pet or **Companion Animal** means an owned, Domestic Animal that is considered a pet. This does include not a Hybrid dog or Hybrid cat. Guard Dogs are not considered Companion Animals or Companion Pets.

Companion Bird means A bird commonly kept as a pet by humans and confined on the property of the Owner, including parakeets, canaries, lovebirds, finches, parrots, macaws, cockatoos, cockatiels, toucans and lorries, but excluding:

1. All of the family *Anatidae* (waterfowl);
2. All of the family *Tetraonidae* (grouse and ptarmigans);
3. All of the family *Phasianidae* (quail, partridges and pheasants);
4. All of the family *Meleagrididae* (wild turkeys) except for the domestic strains of turkeys;
5. All of the family *Phasianidae* (francolins);
6. All of the family *Gruidae* (cranes);
7. All of the family *Rallidae* (rails, coots and gallinules);
8. All of the family *Charadriidae* (plovers, turnstones and surfbirds);
9. All of the family *Scolopacidae* (shorebirds, snipe, sandpipers and curlews);
10. All of the family *Recurvirostridae* (avocets and stilts);
11. All of the family *Scolopacidae* (phalaropes);
12. All of the family *Columbidae* (wild pigeons and doves) except for the domestic strains of pigeons; and
13. Ducks, geese, chickens and other poultry.

Confined or **confinement** means restriction of an animal at all times by an owner or keeper in an escape proof building or other enclosure away from other animals and the public.

Crate means a device or structure designed for the temporary confinement of an Animal.

Custody or **Custodian** means the possession, control over and responsibility for an Animal by a Person who may or may not be the Owner but who may represent the Owner of an Animal.

Dangerous dog means a dog that caused a serious injury to a person, Domestic Animal or Livestock.

Dog means a member of the species *Canis Lupus Familiaris*.

Domestic Animal means any living creature other than a human being that is customarily used for companionship, food or work. For the purpose of this chapter all Companion Animals are Domestic Animals but not all Domestic Animals are Companion Animals.

Domestic Livestock or **Livestock** as defined by the State Livestock Code and shall include, but not be limited to, bison, buffalo, cattle, horses, donkeys, mules, chickens, ducks, poultry, llamas, ostriches, emus, rheas, camelids (camels), farmed Cervidae, swine, sheep or goats.

Ear-tip means the removal of approximately a quarter-inch off the tip of the cat's left ear in a straight line cut, the universal sign of a sterilized, unowned cat. If these requirements are met, the ear-tipped cat is exempt from licensing, limits, tag, and certain stray and at-large provisions of this chapter and may be exempt from other provisions directed toward owned animals.

Electronic leash, electronic collar or **e-collar** means a device that uses a remote to send signals that deliver electric stimulation, vibrations, beeps to control, confine or correct an animal. Is not considered a form of immediate control and shall not be used in place of a leash.

Emergency measures mean any action taken by animal control or its designated agents to preserve the health and life of an animal or human being, including but not limited to entering vehicles or premises, with probable cause and/or exigent circumstance, and impounding an animal to prevent present or imminent suffering to the animal, a human being, or another animal.

Emergency Medical Care means the care required in response to a traumatic injury or rapidly evolving health crisis concerning an Animal.

Enclosed lot means any parcel of land or portion thereof in private ownership around the perimeter of which a wall or fence has been erected of such a height and surety so as to retain the species of animal within the bounds for which the fence was erected.

Enclosure means an area completely surrounded by a wall, fence, or animal pen of sufficient height and strength to contain the animal(s) within and prevent the entry of any other animal(s).

Establishment means a place of business together with its grounds and equipment.

Estray or **stray** means any Companion Animal, Companion Pet, Exotic Animal or Livestock found running at large or unattended beyond the boundaries of the premises of the owner.

Exotic Animal or **Wild Animal** means those species of animals that are considered exotic to humans. Exotic Animals include any and all of the following orders and families, whether bred in the wild or in captivity, and any and all hybrids. The animals listed in the parentheses are intended to act as examples and are not to be construed as an exhaustive list or limit the generality of each group of animals, unless otherwise specified:

1. Class *Mammalia*
 - a. Order *Artiodactyla* (hippopotamuses, giraffes, camels, deer, not cattle or swine or sheep or goats)
 - b. Order *Carnivora*
 - i. Family *Felidae* (lions, tigers, cougars, leopards, ocelots, servals, not domestic cats)

- ii. Family *Canidae* (wolves, coyotes, foxes, jackals, not domestic dogs)
 - iii. Family *Ursidae* (all bears)
 - iv. Family *Mustelidae* (weasels, skunks, martens, minks, not ferrets)
 - v. Family *Procyonidae* (raccoons, coatis)
 - vi. Family *Hyaenidae* (hyenas)
 - vii. Family *Viverridae* (civets, genets, mongooses)
 - c. Order *Edentalia* (anteaters, armadillos, sloths)
 - d. Order *Marsupialia* (opossums, kangaroos, wallabies, not sugar gliders)
 - e. Order *Perissodactyla* (rhinoceroses, tapirs, not horses or donkeys or mules)
 - f. Order *Primates* (lemurs, monkeys, chimpanzees, gorillas)
 - g. Order *Proboscidae* (elephants)
 - h. Order *Rodentia* (squirrels, beavers, porcupines, not guinea pigs, or rats, or mice, or gerbils, or hamsters)
2. Class *Reptilia*
- a. Order *Squamata*
 - i. Family *Varanidae* (only water monitors and crocodile monitors)
 - ii. Family *Iguanidae* (only green iguanas and rock iguanas)
 - iii. Family *Boidae* (all species whose adult length has the potential to exceed eight feet in length)
 - iv. Family *Colubridae* (only boomslangs and African twig snakes)
 - v. Family *Elapidae* (coral snakes, cobras, mambas) - All species
 - vi. Family *Natricidae* (only keelback snakes)
 - vii. Family *Viperidae* (copperheads, cottonmouths, rattlesnakes) - All species
 - b. Order *Crocodylia* (crocodiles, alligators, caimans, gavials) - All species
 - c. Order *Cetacea* (whales, dolphins, porpoises)
 - d. Order *Pinnipedia* (seals, sea lions, walruses)

Exotic or Wild Animal Permit means the Permit allowing a Person to own a Permissible Exotic or Wild Animal within the Truth or Consequences City Limits.

Feline hybrid means any offspring which results from the breeding of a domestic species or breed of feline with any wild species or breed of feline, such as an African Serval cat. Any animal which at any time has been or is advertised, or otherwise described or represented as a feline hybrid by its owner to an Animal Control Officer, Veterinarian, Police Officer, or Official of the Department of Health shall be considered a feline hybrid for the purpose of this chapter. An animal shall not be classified to be a feline hybrid based strictly on its appearance.

Feral animal means an individual animal of a domesticated species that is not behaviorally compatible with humans, and is therefore not suitable to serve as a pet, Companion Animal, or work animal. Any feral animal that by physical aspect and behavior are deemed to be un-owned and have been trapped for the purpose of improving public health and limiting reproduction.

Finder means any person who discovers and temporarily takes possession of a Companion Animal that has been separated from its Owner.

Foster means to take temporary Custody of any Animal on behalf of or at the request of the Truth or Consequences Animal Shelter or other non-profit to administer veterinary care, groom, train, provide special feeding, care for or otherwise provide for the Animal.

Guard Dog means a dog that is used to protect a Guard Dog Site. Guard dogs are not considered Companion Animals or Companion Pets.

Guard Dog Site means a commercial establishment that utilizes a Guard Dog.

Guard Dog Site Permit or **GDSP** means the permit required for a Guard Dog Site.

Grooming parlor means any establishment, or part thereof, or premises maintained for the purpose of offering animals cosmetological services for profit.

Handler means a person who is responsible for controlling the actions of a guard dog.

Harness with respect to a dog, means a properly fitting apparatus that is not abrasive and that restrains the dog by the body and shoulders without the involvement of the neck. With respect to a cat means, a properly fitting apparatus that is not abrasive featuring adjustable collar buckles around the neck that are joined to an adjustable girth.

Healthy means that an Animal is free from disease and not suffering from any objectively observable illness.

Heat, estrus or **season** means a regularly recurring state of estrus during which the female animal is capable of attracting or accepting the male for breeding or is capable of conceiving.

Hobble or **hobbling** means to tie or strap the legs of an animal together to prevent it from straying.

Household means a human social or family unit comprised of one or more Persons, occupying, residing and domiciled in the same residence.

Humane live trap or **live humane trap** means any device designed to catch and restrict an Animal without causing any harm to the Animal.

Illness means a malady, injury, impairment, or physical/mental condition that requires veterinary care.

Immediate control means direct physical control over an animal by the owner/responsible party by use of:

1. A secure collar or harness and leash no longer than eight (8) feet long for a dog; or
2. A secure leash no longer than eight (8) feet long in conjunction with a properly fitting harness for a cat or ferret; or
3. A secure and appropriate portable animal crate or cage for any animal.

Immediate control does not include:

1. Voice or oral commands/control.

2. Electronic leashes, electronic collars, electronic training collars or other similar devices.

Impound means the act by an Animal Control Officer or Law Enforcement Officer of taking up and confining an animal within a shelter or facility used by the City for the confinement of said animal.

Incarceration, Imprisonment or Incarceration Hold means the restraint or detention of an individual at a jail, prison, corrections facility or other similar facility by Law Enforcement.

Injured means the condition of an Animal being harmed, disabled or impaired in a physical sense which is determined by the reasonable objective observation of wounds, injured limbs, broken bones, or disfiguring lacerations.

Intact Animal means an animal that has not been spayed, neutered or altered.

Invisible Fence, Hidden Fence, Radio Fence or Electric Fence means an electronic pet containment system that uses a wire, typically a buried wire, and a collar to keep pets within a designated boundary by delivering a beep, vibration, electric shock or other warning when an animal gets too close to the boundary. An invisible fence is not considered a secure fence.

Kennel area means a secure space within which an animal is housed that is of sufficient height and strength to contain the animal within and provide sufficient room for the animal to comfortably move around within the structure and lie down with limbs and tail outstretched.

Commercial Kennel means any premises on which a total of five or more dogs or cats, in any combination thereof, four months of age or older, are kept; and where the business of buying, selling, breeding, training or boarding of dogs and/or cats is conducted.

Law Enforcement Officer means a government employee appointed to enforce the law, such as a police officer or sheriff.

Leash means a physical chain, strap, rope, cord or line of sufficient strength and material for leading, controlling and restraining an animal. Does not include electronic collars, electronic leashes or electronic training collars. A leash shall not be longer than eight (8) feet long.

License or Animal License, Companion Animal License means a City of Truth or Consequences Animal License.

License Certificate, Animal License Certificate or Companion Animal License Certificate means the certificate supplied by the City of Truth or Consequences that contains the number of the City of Truth or Consequences Animal License and attests that a Companion Animal has a valid Companion Animal License.

License Tag, Animal License Tag or Companion Animal License Tag means the tag supplied by the City of Truth or Consequences that contains the number of a City of Truth or Consequences Companion Animal License.

Litter means one or more sibling offspring of a Companion Animal under six (6) months old.

Litter Permit or Companion Animal Litter Permit means the permit required when a Companion Animal becomes pregnant.

Licensed veterinarian or veterinarian means a person with a Doctor of Veterinary Medicine degree, licensed to practice in the State of New Mexico.

Medical Hold means a temporary voluntary or involuntary hold on an individual for treatment or evaluation by medical professionals at a hospital or other similar facility due to injury, illness, incapacitation or other medical condition or due to death of owner.

Microchip means a passive transponder which can be implanted in an animal by injection and which is a component of a radio frequency identification (RFID) system. Such system must be compatible with a scanner used by an Animal Control Officer or Animal Shelter Staff.

Neglect means the failure of an Owner to provide care for an Animal in the Owner's Custody which failure causes an Animal to suffer physical or emotional harm.

Neuter means to render a male animal permanently sterile and incapable of reproduction.

Owner means a person who is at least eighteen (18) years of age who possesses an Animal and claims a legally valid right of possession or title of an Animal superior to the rest of the world. Under this Chapter, any person acting as an agent of the Owner and any Person over the age of eighteen (18) in a Household and left in charge of an Animal may be deemed the Owner. This does not include any person acting on behalf of the City Animal Shelter to temporarily house or Foster animals.

Permissible Exotic or Wild Animal means an Exotic or Wild Animal that does not violate federal or New Mexico State law.

Permit means a document evidencing approval by the City Manager, the City Commission, the Mayor, or a designee of the City Manager or Mayor to conduct a certain activity or possess a certain animal.

Permit Holder means a qualified person to whom a valid permit has been provided.

Permitted Premises means the establishment, residence, real property or other site for which a permit has been issued.

Person means an individual, firm, partnership, corporation, company, society, association, legal entity, and every agent or employee thereof.

Person in Charge means the individual present or individual in apparent supervision or control of a premise.

Pet means any domesticated animal kept as a Companion Animal, and not intended to be used for farming or human consumption. Livestock shall not be considered a pet even if kept as a Companion Animal and not used for farming or human consumption.

Pet shop or dealer means any commercial establishment or person, including wholesalers engaged in the business of buying and selling or holding pet animals for sale. This term shall not include Livestock auctions.

Police Officer means a sworn member of the Truth or Consequences Police Department, the Sierra County Sheriff's Office or the New Mexico State Police.

Possession means the custody of an animal.

Potable water means water that can be consumed without concern for adverse health effects and is safe for drinking.

Potentially dangerous dog means a dog that may reasonably be assumed to pose a threat to public safety as demonstrated by the following behaviors:

1. Causing an injury to a person, Domestic Animal or Livestock that is less severe than a serious injury; or
2. Chasing or menacing a person, Domestic Animal or Livestock in an aggressive manner and without provocation; or
3. Acting in a highly aggressively manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

Premises means a parcel of land owned, leased, rented, or controlled by any person, legal or natural. Such parcel of land may include a structure, and includes such items as kennels, houses, mobile homes, apartments, condominiums, and townhouses which are located on a parcel of land.

Proper enclosure means secure confinement indoors or outdoors, such as in a fenced yard, locked pen or other structure that is designed to prevent the animal from escaping the confined area and young children from entering the confined area but does not include chaining, tethering, restraining or other affixing the animal to a stationary object.

Proof of Ownership means any documentation or evidence which proved to the satisfaction of the City Manager's designee that a Person is the Owner of an Animal, including a Microchip identification, Veterinarian invoice, official registration, or photographs of the Animal.

Provoked means the response of an Animal that a reasonable Person believes the Animal has taken to defend itself, its offspring, its Owner or family member, or another Person within its immediate vicinity from assault, actual or perceived, or to defend real property belonging to its Owner or family member.

Public way means an alley, avenue, boulevard, bridge, channel, ditch easement, express freeway, highway, land, parkway, right-of-way, road, sidewalk, street subway, tunnel, viaduct, walk or other ways in which the general public or a public entity have a right, or which are dedicated, whether improved or not.

Qualified service animal means:

1. Any qualified service dog or qualified service miniature horse that has been or is being trained to provide assistance to an individual with a disability;
2. An animal recognized as a service animal under either federal regulations implementing the Americans with Disabilities Act, or NMSA 1978, Chapter 28, Article 11, which is the New Mexico Service Animal Act, and as amended;
3. A qualified service animal does not include a pet, an emotional support animal, a comfort animal, or a therapy animal as defined in NMSA 1978, Section 28-11-2(B) (2013).

Quarantine means the segregation, detention and isolation of an animal for any time as required by state law in order to observe the animal suspected of contagion and control the spread of said contagion.

Reclaim, Redeem or Redemption means an Owner's or other person designated by the owner's recovery of an Animal that has been Impounded at the Truth or Consequences Animal Shelter.

Responsible party for the animal or Responsible Party means the owner of a Domestic Animal or Livestock, or an adult person placed in charge of the Domestic Animal or Livestock in the absence of incapacitation of the owner.

Run at large or running at large means to be free of control beyond an enclosed lot or the premises or vehicle of the owner or responsible party.

Safekeep or safekeeping means the temporary housing and care of an animal by the animal shelter in an event where the owner or responsible party is incapacitated or otherwise unable to provide care for the animal.

Secure Enclosure means a cage, crate or box, that may be portable, of sufficient strength to contain a Domestic Animal within and is not able to be invaded.

Secure Facility means a house or building in which an Animal is being restricted that will prevent the Animal, including a Guard Dog, from being able to escape.

Secure Fence means a visible protective or confining barrier of sufficient strength and height that prevents any Domestic Animal or Livestock, including Guard Dogs, from escaping the property on which the Animal is being restricted. The Secure Fence shall also reasonably protect the Animal within the fence from other Domestic Animals, Livestock or people coming into contact with the restrained Domestic Animal or Livestock. This includes a dog run type structure.

Serious injury means A physical injury that results in broken bones, multiple bites or disfiguring lacerations requiring sutures or reconstructive surgery.

Seize means to take custody of an Animal with or without notice to the Owner or the consent of the owner. Exigent Circumstances must exist if an animal is taken into Custody without notice to the Owner or the consent of the Owner.

Songbird or songbirds means a bird that utters a succession of musical tones and shall include but are not limited to:

1. All of the family *Estrildidae* (old world finches).
2. All of the family *Fringillidae* (new world finches).
3. All of the family *Icteridae* (Blackbirds).
4. All of the family *Sittidae* (Nuthatches).
5. All of the family *Troglodytidae* (Wrens).
6. All of the family *Muscicapidae* (old world flycatchers).
7. All of the family *Sturnidae* (Starlings).
8. All of the family *Paridae* (Titmice and nuthatches.)
9. All of the family *Phylloscopidae* (Leaf warblers.)

10. All of the family *Corvidae* (Crows and jays.)
11. All of the family *Paradisaeidae* (Birds of Paradise.)
12. All of the family *Pipridae* (Manakins.)
13. All of the family *Tyrannidae* (Tyrant flycatchers.)

Spay means to render a female animal permanently sterile and incapable of reproduction.

Surrender or **Owner Surrender** means the relinquishment of Ownership of a Domestic Animal to the Truth or Consequences Animal Shelter by the Owner of the Animal.

Tether means to restrain an animal by means of a runner cable or similar device attached to a running line, pulley or trolley system.

Tormenting of animals means the act of bothering, annoying, distracting or agitating an animal.

Trap-Neuter-Return or **TNR** means a humane method to manage feral and stray cat populations by trapping them, spaying or neutering them, and returning them to their original outdoor homes. The process typically includes vaccinating the cats and often ear-tipping them to signify they have been sterilized.

Trolley or **Trolley System** means a cable strung between two fixed and stable points, to which a dog on a short lead is attached, allowing for freedom of movement.

Un-weaned means of an infant or other young mammal not accustomed to food other than its mother's milk.

Vaccination or **Vaccinate** means the inoculation of an animal with a vaccine administered by a veterinarian for the purpose of immunizing the animal against rabies as required by the State of New Mexico Rabies Control Act of 1959. The amount given should be sufficient to provide immunity from rabies for a minimum of one year. This also includes the inoculation of an Animal against distemper, parvo, para influenza, corona virus or Bordetella and other vaccinations deemed necessary from time to time by the City Manager or City Manager's designee.

Vermin means wild rodents and various insects including flies, mosquitoes, ants and wasps.

Veterinary hospital or **veterinary clinic** means any establishment maintained and operated by a licensed veterinarian for surgery, diagnosis and treatment of diseases and injuries to animals.

Vicious animal means any animal which kills or severely injures (so as to result in muscle tears or disfiguring lacerations, require multiple sutures, or corrective or cosmetic surgery, permanent disfigurement) a person or domesticated animal, but it does not include an animal which bites, attacks or injures a person or animal which is unlawfully upon its owner's premise, or which is provoked. Vicious animal includes an animal that inflicts a bite after it has been deemed a Dangerous Animal, regardless of severity of such bite.

Cross reference(s) - Rules of Construction, Definitions, Generally, § 1-2.

SEC. 3-3. PERJURY.

It is unlawful for any person to make any false affidavit, or knowingly swear or affirm falsely to any document, matter or thing required to be sworn or affirmed by the terms of this Chapter.

SEC. 3-4. NO PRIVATE CAUSE OF ACTION.

Nothing in this article is intended to create a private cause of action.

ARTICLE II. ADMINISTRATION OF CHAPTER

SEC. 3-5. ANIMAL CONTROL OFFICERS.

The City Manager is responsible for the administration of this chapter. Reasonable rules and regulations shall be prescribed by the Commission to carry out the intent and purpose of this chapter, pursuant to standards created by this chapter. Powers to enforce the chapter are delegated to the Chief of Police and may be delegated by the Chief of Police to the appointed Animal Control Officers, Code Enforcement Officer or Police Officers as he may deem expedient.

(Ord. No. 725, 2-9-22)

State law reference(s) - Municipal Authority to designate Animal Control Officer, NMSA, § 77-1-15.1B, New Mexico Administrative Code 7.4.2.17.

SEC. 3-6. AUTHORITY OF ANIMAL CONTROL OFFICERS.

- A. Animal Control Officers and/or Truth or Consequences Police Officers shall have the authority to issue citations for violations of this Chapter within the corporate limits of the city or in other areas of jurisdiction as specified in agreements with other entities.
- B. Truth or Consequences Police Officers and those designated or assigned to the enforcement of ordinances regulating or controlling animals and fowl by the Chief of Police, shall have the authority to investigate upon probable cause any alleged violation of this Chapter.
- C. Animal Control Officers and Truth or Consequences Police Officers shall have the authority to take up and impound any animal or fowl authorized to be impounded by this Chapter or by other ordinances within the specified agreements with other entities.
- D. Animal Control Officers shall wear a uniform and a badge identifying such officer as an Animal Control Officer.

State law reference(s) - Municipal Authority to designate Animal Control Officer, NMSA, § 77-1-15.1B, New Mexico Administrative Code 7.4.2.17.

SEC. 3-7. ESTABLISHMENT OF ANIMAL SHELTER.

There is hereby established an Animal Shelter which shall be located at a location designed by the Commission.

(Ord. No. 725, 2-9-22)

SEC. 3-8. ANIMAL SHELTER, HOURS OF BUSINESS.

The Animal Shelter of the City of Truth or Consequences shall be kept open to the general public for the transaction of business during the hours set by the City Manager.

(Ord. No. 725, 2-9-22)

SEC. 3-9. SAFEKEEPING OF ANIMALS BY THE ANIMAL SHELTER.

- A. A Law Enforcement Officer, Animal Control Officer, or animal owner or person designated by an animal owner, may require a Domestic Animal to be placed in the care and custody of the Animal Shelter to ensure that the Domestic Animal is properly cared for. In these situations, the safekeep of the Domestic Animal at the expense of the owner shall only occur for a period of:
 - 1) Not more than ten (10) calendar days for a person on a Medical Hold. After ten (10) calendar days the Domestic Animal may become property of the Animal Shelter and a boarding fee established by resolution may be applied.
 - 2) Not more than ten (10) calendar days for a person on an Incarceration Hold. After ten (10) calendar days the Domestic Animal may become property of the Animal Shelter and a boarding fee established by resolution may be applied.
- B. The owner shall be responsible for contacting a designated person or organization to pick up the Domestic Animal from the Animal Shelter and the owner shall contact the Animal Shelter and provide authorization for such person or organization to take custody of the Domestic Animal to the Animal Shelter.
- C. After the safekeep period has expired, the animal is no longer classified as a safekeep the Domestic Animal may be considered abandoned and become property of the Animal Shelter unless the owner or designated party notifies the Animal Shelter of a date and time the Domestic Animal will be picked up, not to exceed an additional 72 hours at the owner's expense. No Domestic Animal shall be released from the Animal Shelter until all fees are paid in full. Fees may be waived or reduced by the City Manager or Designee of the City Manager. Owners who knowingly abandon or fail to arrange for pickup of their Domestic Animal at the Animal Shelter may be prosecuted under other sections within the Municipal Code.

(Ord. No. 725, 2-9-22)

SEC. 3-10. SEIZURE OF ANIMALS NOTICE.

- A. An Animal Control Officer, or designee who reasonably believes that the life or health of an animal to include Livestock is endangered due to cruel treatment may apply to a court of proper jurisdiction in the county where the animal is located for a warrant to seize the animal.
- B. If the court finds probable cause that the animal is being cruelly treated, the court shall issue a warrant for the seizure of the animal. The court shall also schedule a hearing on the matter as expeditiously as possible within ten business days unless good cause is

demonstrated by the city for a later time and such extension is approved by a judge with proper jurisdiction to enforce this Chapter.

- C. Written notice regarding the time and location of the hearing shall be provided to the owner of the seized animal. The court may order publication of a notice of the hearing in a newspaper closest to the location of the seizure.
- D. If the owner of the animal cannot be determined or cannot be located, a written notice regarding the circumstances of the seizure shall be conspicuously posted where the animal is seized at the time the seizure occurs.
- E. At the option and expense of the owner, the seized animal may be examined by a veterinarian of the owner's choice if approved by a judge with proper jurisdiction to enforce this Chapter.
- F. If the animal is a type of Livestock, seizure shall be pursuant to Chapter 77, Article 18 NMSA 1978.

(Ord. No. 725, 2-9-22)

State law reference(s) – Seizure of Animals; Notice, NMSA, § 30-18-1.1.

SEC. 3-11. DISPOSITION OF SEIZED ANIMALS.

- A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court may order the return of the animal to its owner.
- B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court may order the animal be relinquished to the Animal Shelter or other facility.
- C. An animal control agency operated by the municipality, or an Animal Shelter or other animal welfare organization designated by an animal control agency or an Animal Shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.
- D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay and may conduct periodic reviews of its order. If the posting of security is ordered, the animal control agency, Animal Shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.
- E. If the owner of the animal does not post security within 13 days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the animal control agency, Animal Shelter or animal welfare organization for adoption, transfer out or humane destruction.

- F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed cruelty to animals.
- G. As used in this section, "Livestock" means any of the large or small Livestock, including, but not limited to horses, cattle, mules, donkeys, burros, swine, goats, sheep, and fowl, including, but not limited to, chickens, guinea hens, ducks, turkeys, geese, quail, or pigeons or any other Domestic Animals typically used in the production of food, fiber, or other products or activities defined by the city manager as agricultural.

(Ord. No. 725, 2-9-22)

State law reference(s) – Disposition of Seized Animals, NMSA, § 30-18-1.2.

SEC. 3-12. COSTS OF SEIZED ANIMALS.

- A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal.
- B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted.

(Ord. No. 725, 2-9-22)

State law reference(s) – Costs, NMSA, § 30-18-1.3.

SEC. 3-13. STERILIZATION AGREEMENT/DEPOSIT FOR SPAYING AND NEUTERING DOGS AND CATS.

- A. It is the intent of the City for all dogs and cats over the age of 4 months to be spayed/neutered. Therefore, no cat or dog shall be released from the Animal Shelter to an adopting person unless it has been spayed/neutered or unless a sterilization agreement has been signed and a sterilization deposit set by resolution has been paid.
- B. The sterilization deposit shall be reimbursed only upon presentation of a receipt from a veterinarian that the adopted animal has been sterilized within 30 days of the date of adoption for cats/dogs over the age of six months or by six months of age for kittens and puppies.
- C. An unsterilized animal reclaimed by its owner shall be released without being sterilized upon payment of the sterilization deposit and impoundment/boarding fees imposed by the shelter and set by resolution, and the owner shall sign an agreement stating he/she will sterilize the animal within 30 days after release or will obtain a breeder permit or its equivalent. The sterilization deposit may be reimbursed upon presentation by the owner of a receipt from a veterinarian that the animal has been sterilized within 30 days of release.

(Ord. No. 725, 2-9-22)

State law reference(s) – Sterilization Agreement and Sterilization Deposit Required, NMSA, § 77-1-20.

SEC. 3-14. QUALIFIED SERVICE ANIMALS.

- A. A person with a disability who is using a qualified service animal, as defined by the American Disability Act (ADA), shall be admitted to any building open to the public and to all other public accommodations and shall be allowed access to all common carriers; provided that the qualified service animal is under the control of an owner, a trainer or a handler of the qualified service animal. A person shall not deny an individual with a qualified service animal entry to a building open to the public or to any public accommodation or deny access to a common carrier, regardless of any policy of denying pets entry to that building, public accommodation or common carrier. A person shall not be required to pay any additional charges for the qualified service animal, but may be liable for any damage done by the qualified service animal; provided that persons without disabilities would be liable for similar damage; and
- B. This section does not require a public accommodation or common carrier to permit an owner, trainer or handler using a qualified service animal to have access to a public accommodation or common carrier in circumstances in which the individual's use of the qualified service animal poses a direct threat of significant harm to the health or safety of others.

Credits L. 1989, Ch. 242, § 2; L. 1999, Ch. 262, § 2; L. 1999, Ch. 288, § 2; L. 2005, Ch. 224, § 3, eff. June 17, 2005; L. 2013, Ch. 57, § 3, eff. June 14, 2013. § 28-11-3. Admittance of qualified assistance animals, State of New Mexico

(Ord. No. 725, 2-9-22)

SECS. 3-15 – 3-28. RESERVED.

ARTICLE III. PENALTIES

SEC. 3-29. GENERAL PENALTY.

Whenever in this Chapter an act is prohibited or is made or declared to be unlawful or an offense or whenever in such section of the Chapter the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the penalty for violation of any section of this Chapter shall be as follows:

1. Any person who violates any of the provisions of this Chapter shall be deemed guilty of a misdemeanor and may be punished by a minimum of fine \$25.00 and not exceeding \$200.00 and/or imprisonment for a period not exceeding ninety (90) days in the discretion of the court upon conviction of violating the Ordinance. A person may, in addition to any other penalty, be required to attend an animal training or care school/classes in the discretion of the Court.

2. Each day any such violation or failure to perform such act ~~shall continue~~ as provided in this Chapter exists, it is an offense and ~~shall continue~~ shall constitute a separate offense, unless otherwise specifically provided.
3. Each animal cited under this chapter shall constitute a separate offense, unless otherwise specifically provided.

SEC. 3-30. RESTITUTION.

Notwithstanding any of the foregoing, in the event any Domestic Animal or Livestock damages property, whether public or private, or causes injury to any person, Domestic Animal or Livestock, and such damage or injury is found to have been an element of the violation of any provision of this Chapter, a court of proper jurisdiction may, at its discretion, require the defendant to make restitution within a reasonable time, to the victim of said damage or injury.

SECS. 3-31 – 3-48. RESERVED.

ARTICLE IV. CONTROL AND IMPOUNDING PROCEDURES

SEC. 3-49. IMPOUNDING ESTRAYS; PROCEDURES; FEES

- A. No person shall, without the knowledge or consent of the owner, hold or retain possession of any Domestic Animal or Livestock of which he is not the owner or custodian for more than 24 hours without first reporting the possession of such Domestic Animal or Livestock to an Animal Control Officer, giving his/her name and address, a true and complete statement of the circumstances under which the animal was taken, and the location where such animal is confined.
 - 1) A finder of a Domestic Animal or Livestock who chooses to hold the Domestic Animal or Livestock shall immediately contact an Animal Control Officer, Animal Shelter or the Owner of the Domestic Animal or Livestock.
 - 2) A finder shall have the Domestic Animal scanned for a microchip.
 - 3) A finder may elect to transport a Domestic Animal to its owner's premises or to the Truth or Consequences Animal Shelter.
- B. It is unlawful for any finder taking up a Domestic Animal or Livestock to fail to give the notice required in subsection (a) of this section and for any person having such animal in his/her possession to fail or refuse to immediately surrender such Domestic Animal or Livestock to the Animal Control Officer, legal owner or custodian upon demand thereof.
- C. If an estray Domestic Animal is wearing a license, has other identification, or is implanted with a microchip that is registered with the City and/or appropriate microchip company it shall be confined at the shelter for a period of 72-hours and an attempt to locate and notify the owner shall be made.
- D. If an estray Domestic Animal is not wearing a license or other identification and not implanted with a registered microchip, the Domestic Animal shall be confined for a 72-hour period at the Animal Shelter.

- E. If a person claims and provides proof of ownership of an estray Domestic Animal or Livestock confined at the Animal Shelter, it shall be returned to the owner or designee of the owner after all applicable fees have been paid. Owner shall bear the cost of any expenditures while animal is confined including veterinary services. A citation may be issued to the owner of an estray animal.
- F. Title for a Domestic Animal will transfer to the Animal Shelter after the impoundment period. The Animal Shelter may transfer, return, adopt or dispose of unclaimed estray Domestic Animals or Livestock impounded under this section according to their policies and procedures the day after the required impoundment period.
- G. No dog or cat that has been impounded by the Animal Shelter will be sold for the purpose of breeding or resale or research.
- H. A Domestic Animal or Livestock which continues to be an alleged nuisance or that is deemed a threat to public safety due to aggression may be impounded by the Animal Control Officer with a warrant issued by a court of proper jurisdiction until such time as a judgment is made by a court of proper jurisdiction.
- I. Prior to adoption, return, transfer or redemption, each Companion Animal will be microchipped for positive identification and listed in the national database. Costs of such services will be added to the adoption/redemption fee collected.
- J. It shall be the responsibility of the owner to reimburse the City for animal boarding, vaccination, microchipping, emergency veterinary costs, or other expenses incurred by the City under the provisions of an animal that has been legally impounded under this Chapter. Fees established by resolution are as follows:
 - 1) Impound Fee as set by resolution
 - i. The impound fee will increase by an amount set by resolution every time the animal is impounded within one (1) calendar year.
 - 2) Impound Boarding Fee as set by resolution.
 - 3) A Non-Sterilization Deposit fee set by resolution will be added to the impound fee and impound boarding fee for all intact Domestic Animals. This fee will be refunded to owner's who provide proof of sterilization to the Animal Shelter within thirty (30) days.
 - 4) A microchip fee set by resolution will be added to any animal that requires a microchip.
- K. All impound fees, boarding fees, emergency veterinary care costs, maintenance costs, vaccination costs, microchipping costs or other costs incurred by the City during impoundment under the provisions of a Domestic Animal or Livestock that has been legally impounded under this Chapter shall be paid in full prior to the release of an Animal from the Animal Shelter.
- L. Fines for violations of this article shall be in accordance with the provisions of section 3-29.

(Ord. No. 725, 2-9-22)

SEC. 3-50. IMPOUNDMENT.

An Animal Control Officer may take up and impound in the Animal Shelter any estray or any Domestic Animal or Livestock kept or maintained contrary to this chapter, including any Domestic Animal or Livestock that is allegedly creating a public nuisance or that is deemed a threat to public safety due to aggression.

(Ord. No. 725, 2-9-22)

State law reference(s) - Municipal authority to impound and dispose of animals running at large, NMSA, § 3-18-3A(3).

SEC. 3-51. DESTRUCTION OF ANIMALS.

- A. If an animal which is impounded under the provisions this Article is suffering because of sickness, injury or age as certified by a licensed veterinarian, then it may be painlessly destroyed under the supervision of a licensed veterinarian by an intravenous or intracardial injection of a dose of barbiturates (sodium pentobarbital), or any other method deemed humane and painless by a qualified member of Animal Shelter Staff or Animal Control Officer under the direction of a licensed veterinarian or by a licensed veterinarian.
- B. Any animal which cannot be brought to an Animal Shelter because it is vicious or infected with rabies or in any painfully crippled condition, may be destroyed by shooting by a Law Enforcement Officer at the direction of the Animal Control Officer or licensed veterinarian.
- C. Any animal deemed vicious by the court having jurisdiction over the enforcement of this Chapter shall be painlessly destroyed under the supervision of a licensed veterinarian by an intravenous or intracardial injection of a dose of barbiturates (sodium pentobarbital), or any other method deemed humane and painless by the Animal Control Officer under the direction of a licensed veterinarian or by a licensed veterinarian.

State law reference(s) - Municipal authority to impound and dispose of animals running at large, NMSA, § 3-18-3A(3).

SECS. 3-53 – 3-67. RESERVED.

ARTICLE V. OWNER'S DUTIES

SEC. 3-68. VACCINATIONS.

- A. It is the duty of all persons owning a domestic cat or a domestic dog over the age of three months to have such animals vaccinated against rabies. The rabies vaccination shall be given in an amount sufficient to provide immunity from rabies for at least one (1) year and shall be administered by a licensed veterinarian. A certificate from a licensed veterinarian shall be evidence of vaccination. The Commission may require other animals to receive annual rabies vaccination.

- B. The veterinarian administering anti rabies vaccine to any animal shall issue to the owner or keeper of the animal a numbered vaccination certificate. The certificate shall contain the name and address of the owner or keeper of the animal, a description of the animal vaccinated, the date of vaccination, and the expiration date of the period of immunity.
- C. It is unlawful for the owner or keeper of any domestic dog or domestic cat, to fail to exhibit its certificate of vaccination upon demand to any police officer or Animal Control Officer.
- D. It is the duty of all persons who adopts a dog to have such dog vaccinated against rabies, canine distemper complex, and parvo virus within five (5) days of the date of adoption. It is the duty of all persons who adopt a cat to have such cat vaccinated against rabies, feline distemper complex, parvo virus and Feline Viral Rhinotracheitis, Calicivirus, and Panleukopenia (FVRCP) within five (5) days of adoption.
- E. Each animal cited as a violation under this section is considered a separate offense.

State law reference(s) – New Mexico Administrative Code 7.4.2.8

SEC. 3-69. LICENSE REQUIRED.

- A. All residents of Truth or Consequences who owns, possesses or harbors any Domestic Animal three months of age or older shall:
 - 1) Obtain a license tag for each Domestic Animal, or;
 - 2) Shall have a microchip implanted and registered with the appropriate microchipping company as well as registered with the City for each Domestic Animal they own that is over the age of three months. Such microchip, provided it is registered with the City, may act in place of a license tag.
- B. Any person who does not reside within the corporate limits of Truth or Consequences who keeps a Domestic Animal in the City for more than fifteen (15) consecutive days or an aggregate of thirty (30) days in any year shall:
 - 1) Obtain a license tag for each Domestic Animal, or;
 - 2) Shall have a microchip implanted and registered with the appropriate microchipping company as well as registered with the City for each Domestic Animal they own that is over the age of three months. Such microchip, provided it is registered with the City, may act in place of a license tag.
- C. Collar or Harness Requirements for license tags.
 - 1) Any Domestic Animal outside of the owner's premises shall wear a collar or harness with a current license tag attached to the collar or harness.
 - 2) A collar or harness with the required license tag attached may be removed from the Domestic Animal temporarily for medical care, training, grooming or when the Domestic Animal is in a Bona Fide Animal Show, provided the owner or custodian of the Domestic Animal has in their personal possession the valid license tag for each Domestic Animal and shall immediately display upon such request of an Animal Control Officer or Police Officer.

- D. Application for a Domestic Animal License shall be made as directed and shall state the name and address of the owner, the name, breed, color, age and sex of such animal, microchip number if applicable and any other information deemed necessary. A current rabies vaccination certificate shall be presented at the time of application for the license. Upon payment of the license fee, as prescribed in Section 3-149 of this Chapter, a license certificate for each animal shall be issued. If a license tag is lost, replacement tags with a cost set by resolution shall be purchased. The license shall expire on the same date as the rabies certificate or one year from the date of issue whichever is greater.
- E. Within five business days upon change of ownership of any Domestic Animal, the new owner shall apply for a new Animal License with their personal identifying information.
- F. All residents of Truth or Consequences or non-residents who have a Domestic Animal implanted with a microchip and registered with the City and appropriate microchipping company, shall ensure owners physical address, owner personal identifying information and owners contact information is current and valid with the City and appropriate microchipping company to ensure proper identification of the Domestic Animal and owner.

(Ord. No. 725, 2-9-22)

State law reference(s) - Municipal authority to require licensing of dogs, NMSA, § 77-1-15.1.

SEC. 3-70. RESTRAINT OF ANIMALS.

- A. A person owning or having charge, custody, or care over a Domestic Animal or Livestock shall keep the animal under humane physical restraint at all times.
- B. A person owning or having care, custody, or control over an animal on his or her premises shall restrain the animal either by a secure enclosure, secure fence, secure facility or by immediate control.
 - 1) All pens, kennels, stalls, corrals, or other enclosures used to restrain an animal shall be continuously maintained with preservatives, fasteners, and other materials to prevent deterioration and animal escape. Substantial and acceptable locking or latching devices shall be installed on all gates and doors to animal enclosures in such a manner as to be inaccessible to animals and small children in order to prevent animal escape and unauthorized entry.
 - 2) A person owning or having care, custody, or control over a Domestic Animal or Livestock on his or her premises may use a tether as a means of restraint only if:
 - i. The tethered animal has access to adequate food, water, shade and shelter.
 - ii. A tether used to restrain a dog shall be at least 12 feet in length. Such tether shall not enable the animal to reach beyond the owner's property.
 - iii. A tether used to restrain an animal shall be affixed to a properly fitting collar or harness worn by the animal. A person shall not wrap a chain or tether directly around the neck or other body part of the animal.

- iv. A tether used to restrain an animal shall be fastened so that the animal may sit, walk, and lie down using natural motions. Such tether shall be unobstructed by objects that may cause the tether or animal to become entangled, strangled or denied access to adequate necessities.
 - 3) Voice commands are not an acceptable form of restraint.
 - 4) Electronic Leashes are not an acceptable form of restraint.
 - 5) Invisible fences are not an acceptable form of restraint.
 - 6) Crates are prohibited as a means of restraint while an animal is outdoors and on the premises of an owner or custodian.
- C. A person owning or having care, custody, or control over a Domestic Animal or Livestock off of his or her premises shall keep the animal under immediate control.
- 1) While restrained off premises under the immediate control of the owner or responsible party, the animal must be on a leash that shall enable the handler to maintain control of the animal. The leash shall not exceed eight (8) feet in length while the animal is in and around the inhabitants of the city.
 - 2) A person shall not carry an animal in or upon any vehicle in a cruel, inhumane, or unsafe manner or in any manner that will allow their escape from the vehicle when it is parked or in motion. Animals carried in the open flatbed vehicle shall be crated or restrained upon a non-slick surface and in a manner that prevents the animal from falling out of the vehicle. At no time is an animal allowed to sit or stand in the driver's lap while the vehicle is being operated on any public roadway.
 - i. If an animal is restrained in a crate or other enclosure while in a vehicle, the crate or enclosure shall be securely fastened so that the crate or enclosure cannot slide, turn over or fall out.
 - 3) A person in charge of an amphibian or reptile away from the owner's premises shall keep the animal secured within a closed container that will not expose people unexpectedly to the animal.
 - 4) Voice commands are not an acceptable form of restraint.
 - 5) Electronic Leashes are not an acceptable form of restraint.
- D. A person owning or having care, custody, or control over a Domestic Animal or Livestock shall not detain or restrain an animal upon another person's private property without having permission from the resident or owner of such property.
- 1) If the resident or owner does not permit the animal being detained or restrained upon such property, the animal may be taken up and impounded by the Animal Control Officer at the request of the resident or owner.
 - 2) If the owner of a rented or leased property does not approve of an animal being restrained or detained by the resident on such property, the dispute may be regarded by the Animal Control Officer as a private matter.

E. An owner, manager, agent, or governing board of any multiple dwelling units, including mobile home parks and gated communities, may permit or authorize any animal to be unrestrained upon the common areas of the multiple dwelling units, except upon such areas and within such enclosures specifically designated for such activity, provided the animal is restrained within the bounds of the park or community by a secure fence.

F. Exceptions:

- 1) A working dog that is under the control and supervision of the owner or handler performing such acts as herding on private property, search and rescue, or police work shall not be considered as unrestrained while performing or being trained for such duties.
- 2) Community Cats that have been vaccinated and have an ear-tip and Community Cat Caregivers working or acting under a Trap-Neuter-Return initiative.

G. Each animal cited as a violation under this section is considered a separate offense.

(Ord. No. 725, 2-9-22)

State law reference(s) - Municipal authority to impound and dispose of animals running at large, NMSA, § 3-18-3A(2).

SEC. 3-71. CONFINEMENT OF RABID ANIMALS.

An animal that has rabies or shows signs of having rabies, and every animal bitten by another animal afflicted with rabies or that has been exposed to rabies shall be confined at once in a secure place by the owner. A person who knows or who has reason to know that an animal is infected with rabies or has been exposed to rabies shall immediately upon learning of this notify the Animal Control Officer as to the place where the animal is confined and shall surrender the animal to the Animal Control Officer upon demand. The Animal Control Officer shall then deal with the rabid animal pursuant to state law.

(Ord. No. 725, 2-9-22)

State law reference(s) - Notice to Health Officer of Animal Bites, NMSA, § 77-1-6.

SEC. 3-72. BITING DOGS OR OTHER BITING ANIMALS.

- A. The owner of an animal that bites a person and a person bitten by an animal have a duty to report that occurrence to the Animal Control Officer within 24 hours. The owner of an animal that bites a person shall surrender the animal to an Animal Control Officer to impound such animal for a period of observation.
- B. A physician who renders professional treatment to a person bitten by an animal shall report the fact that he/she has rendered professional treatment to an Animal Control Officer within 24 hours of his/her first professional attendance. The physician shall report the name, sex, and address of the person bitten as well as the type and location of the bite. The physician shall give the name and address of the owner of the animal that inflicted the bite and other facts that may assist the Animal Control Officer in ascertaining the immunization status of the animal.

- C. An animal that bites a person shall be confined securely at a place designated by the Animal Control Officer and for a period of time deemed necessary by the Animal Control Officer. The owner of the animal shall bear the cost of confinement.
- D. A person who has custody of an animal that has bitten a person shall immediately notify the Animal Control Officer.

(Ord. No. 725, 2-9-22)

State law reference(s) - Notice to Health Officer of Animal Bites, NMSA, § 77-1-6.

SEC. 3-73. FEMALE DOGS OR CATS IN ESTRUS TO BE CONFINED.

It shall be unlawful for any owner/responsible party to fail to securely confine any un-spayed Companion Animal in the state of estrus (heat), in a house, building or proper enclosure, in such a manner that such animal cannot come in contact with another animal except for planned breeding, and such that the Companion Animal does not create a nuisance by attracting other animals. When outside on the property of the owner, for metabolic waste elimination, the animal must be physically restrained with a hand-held leash. Owners/responsible party who do not comply may be ordered to remove the animals in estrus (heat) to a boarding kennel, veterinary hospital or Animal Shelter. All expenses incurred as a result of the confinement shall be paid by the owner/responsible party of the animal. Failure to comply with the removal order shall be a violation of this Section and the animal shall then be impounded as prescribed in this Chapter.

(Ord. No. 725, 2-9-22)

SECS. 3-74 – 3-88. RESERVED.

ARTICLE VI. PROHIBITED ACTS

SEC. 3-89. ANIMALS RUNNING AT LARGE.

- A. It is unlawful for any person owning or having the care, custody or control of any Domestic Animal or Exotic Animal to allow or permit that animal to run at large in public or on any public street, public alley, public sidewalk, private or public vacant lot, or private property without the permission of the owner thereof. Any animal permitted to run at large in violation of this section is declared to be a nuisance, a menace to the public health and safety, and may be taken up and impounded as provided in section 3-49.
- B. Each violation committed under this section shall be considered a separate offense.

State law reference(s) - Animals, NMSA, § 3-18-3.

SEC. 3-90. LIVESTOCK RUNNING AT LARGE.

A. It is unlawful for the owners of Livestock to willfully allow or permit Livestock to run at large in public or on any public street, public alley, public sidewalk, private or public vacant lot, or private property without the permission of the owner thereof within the city limits. The owners of the Livestock are subject to prosecution under this section regardless of the Livestock's origination.

B. Each violation committed under this section shall be considered a separate offense.

State law reference(s) - Livestock Running at Large; When Unlawful; Impounding; Disposition; Suit for Damages, NMSA, § 77-14-7, Animals, NMSA, § 3-18-3.

SEC. 3-91. ANIMALS DISTURBING THE PEACE.

- A. For the purposes of this Section, ***persistent*** means noise created by a Domestic Animal, Exotic Animal or Livestock that is continuously heard for a period of ten (10) minutes or more or intermittently heard over a period of one (1) hour or more.
- B. For the purposes of this Section, ***intermittent*** or ***intermittently*** means noise created by a Domestic Animal, Exotic Animal or Livestock that starts and stops at irregular intervals.
- C. For the purposes of this Section, ***continuous*** or ***continuously*** means noise created by a Domestic Animal, Exotic Animal or Livestock that is constant and does not stop for a period of ten (10) minutes or more.
- D. It is unlawful for a person owning or having the care, custody or control of a Domestic Animal, Exotic Animal or Livestock to permit that animal to howl, bark or create noise common to its species which disturbs the comfort and repose of any person of ordinary sensibilities in the vicinity. Persistent, continuous or loud intermittent noise between the hours of ten o'clock (10:00) P.M. and six o'clock (6:00) A.M. which can be heard more than fifty feet (50') from the source of the noise shall be prima facie evidence of a violation of this section.
- E. It is unlawful for a person owning or having the care, custody or control of a Domestic Animal, Exotic Animal or Livestock to keep or maintain on his premises any animal in such an unclean or unsanitary manner as to disturb others by noxious or offensive odors, or otherwise endanger the health, safety, and welfare of the inhabitants of the City.
- F. A person owning, or having the care, custody or control of any Domestic Animal, Exotic Animal or Livestock may be charged with a violation of this section when either an Animal Control Officer or Police Officer has received, from at least two unrelated adult witnesses from different residences, or from one adult witness with recorded video showing the alleged violation, a sworn affidavit attesting to the committing of a nuisance pursuant to this Section, or the Animal Control Officer or Police Officer has witnessed the commission of such nuisance.

- 1) Affidavits attesting to the violation must come from residents within a 500-foot radius of the property where the violation occurred.

G. This Section shall not apply to properly licensed and permitted Animal Shelter's.

(Ord. No. 725, 2-9-22)

Cross reference(s) - Offenses Relating to Public Order and Safety, § 8-31 et seq.

SEC. 3-92. PUBLIC NUISANCE.

- A. It is unlawful for a person owning or having the care, custody or control of any animal to permit, either willfully or through failure to exercise due care or control, any such animal

to commit any nuisance upon a sidewalk, or in a public park; or upon the floor or wall or any common wall or any common hall in any multiple dwelling, entryway, stairway, or wall immediately abutting on a public sidewalk; or upon the floor or wall of any theater, shop, store, office building, or other building used in common by the public; or upon any private property other than that of the animal owner.

- B. A person owning or having care, custody, or control over an animal shall prevent the animal from causing damage or being a nuisance to the person or property of another.
- C. A person owning or having care, custody, or control over a pet such as a dog or cat shall dispose of the waste from the animal in a watertight and fly tight receptacle, which shall be emptied frequently and in such a manner so as to prevent a nuisance or health hazard by noxious or offensive odors.
- D. A person owning or having care, custody, or control over an animal shall not permit the animal to defecate on public property or the property of another unless such animal waste is immediately removed and properly disposed of.
- E. A person owning, or having the care, custody or control of any animal may be charged with a violation of this section when either an Animal Control Officer or Police Officer has received, from at least two unrelated adult witnesses from different residences, or from one adult witness with recorded video showing the alleged violation, a sworn affidavit attesting to the committing of a nuisance pursuant to this Section, or the Animal Control Officer or Police Officer has witnessed the commission of such nuisance.
 - 1) Affidavits attesting to the violation must come from residents within a 500-foot radius of the property where the violation occurred.
 - 2) Complainants must be willing to testify of violations in a court of proper jurisdiction.
- F. A community cat that disturbs the peace by habitually or repeatedly destroying, desecrating, or soiling public or private property may constitute a public nuisance.
 - 1) Animal Control shall investigate an alleged violation of this section upon the receipt of two (2) sworn complaints in a form provided by Animal Control signed by two (2) unrelated City residents living in separate dwellings with 500 feet of the alleged violation. The affidavit shall specify the address or location of the alleged violation, the nature, time and date(s) of the act, the name and address of the owner or custodian, if known, and a description of the cat, if known.
 - 2) If, upon investigation, Animal Control, determines the complainant(s) have taken reasonable abatement measures to resolve or mitigate the nuisance behavior of the cat, Animal Services may request the caregiver, if any, assist in resolving the nuisance or may remove the community cat causing the nuisance.
 - 3) A Community Cat Caregiver may be cited for failing to take reasonable abatement measures to resolve or mitigate any nuisance behavior created by a community cat in which they provide care.

SEC. 3-93. UNLAWFUL USE OF COMPANION ANIMAL LICENSE TAG.

It is unlawful for any person to remove any Companion Animal License Tag from animal and attach it to another animal. It shall be unlawful for any person to manufacture, cause to be manufactured, or to have in his/her possession or under his/her control a stolen, counterfeit, or forged Companion Animal License Tag, rabies vaccination certificate, or other form of licensing as required under this Chapter.

(Ord. No. 725, 2-9-22)

SEC. 3-94. VICIOUS ANIMALS.

It is unlawful for any person to keep or harbor a known vicious animal in the City. Any attack by a vicious animal or any animal displaying traits of a vicious animal may be repelled by the use of reasonable force. After a judicial determination that an animal is vicious, the court having jurisdiction over the enforcement of this Chapter, upon hearing of such complaint, may, in addition to any fine or imprisonment which may be imposed for violation hereof, order the Animal Control Officer to have such animal destroyed as set forth in Section 3-51 of this Chapter.

State law reference(s) - Vicious Animals, NMSA, § 77-1-10.

SEC. 3-95. SALE OF ANIMALS.

A. *Sale in Public.* A person shall not display, sell, or offer for sale, barter, give away, transfer, adopt or otherwise dispose of any animal upon any street, sidewalk, public park or private business, unless said private business is properly licensed or such person is acting on behalf of the Truth or Consequences Animal Shelter or other animal welfare non-profit during an adoption event.

- 1) A person may display information, solicit interest, or otherwise offer an animal for rehoming upon a public way or in a public park, provided that:
 - i. No physical transfer, sale, barter, giveaway, adoption or other disposition of the animal occurs upon any public way or in any public park. All actual rehoming transactions must take place on privately owned property or properly licensed private business.
 - ii. The person complies with Subsections B, C, and D of this Section and any other applicable Sections of this Chapter, state or federal regulations.
 - iii. Nothing in this subsection authorizes anyone to display, offer, or rehome any animal on private property without the permission of the owner thereof, nor does it authorize any unlicensed commercial sale.
 - iv. This Subsection does not restrict the activities conducted by the Truth or Consequences Animal Shelter or any other animal welfare nonprofit during an authorized adoption event.
 - v. Any person offering animals for rehoming shall not request a "rehoming fee, adoption fee or similar fee unless they are properly licensed.

- vi. Any person offering animals for rehoming must be the legal owner of the animal.
 - vii. Any person offering animals for rehoming must provide accurate information about the animal(s) they intend to rehome and shall not misrepresent the health, age, condition, vaccination status, pedigree or purebred status or sterilization status of the animal(s).
- B. *Sale of unweaned animals.* A person shall not display, sell, offer for sale, barter, give away, transfer or adopt a domestic animal under eight (8) weeks of age, or a guinea pig, hamster, or rabbit under four (4) weeks of age. However, in no event shall an animal be sold, transferred or adopted until it is fully weaned and capable of eating on its own to sufficiently maintain proper body condition for its species and age. Nothing herein shall prohibit the transfer of animals between animal shelters and animal rescue organizations. Nothing herein shall prohibit the sale, transfer, or adoption of an unweaned animal if accompanied by a nursing female.
- C. *Prize.* No person shall offer as a premium prize, award, novelty, or incentive to purchase merchandise any live animal.
- D. *Sale of turtles.* A person shall not offer for sale, sell, barter, or give away turtles, except in conformance with appropriate federal regulations.

(Ord. No. 725, 2-9-22)

State law reference(s) - Sale, Purchase, Trade and Possession of Certain Animals Regulated, NMSA, § 77-18-1.

SEC. 3-96. FALSE REPORTING.

- A. It is unlawful for any person to make a false report to a Police Officer or an Animal Control Officer regarding any animal in danger or estray or regarding any supposed violation of this Chapter.
- B. It is unlawful for any person to make a false affidavit, or knowingly swear or affirm falsely to a document, matter or thing required to be sworn or affirmed to by the terms of this Chapter.

SECS. 3-97 - 3-107. RESERVED.

ARTICLE VII. CRUELTY TO ANIMALS PROHIBITED

SEC. 3-108. PHYSICAL ABUSE.

- A. It is unlawful for any person to willfully or maliciously kill, beat, sexually abuse, maim, poison, disfigure, burn, or scald any animal, or to attempt to kill or poison any animal, except that reasonable efforts may be employed only to drive off vicious or trespassing animals. When a Law Enforcement Officer or an Animal Control Officer has probable cause to believe that an animal has been cruelly treated, the officer may impound the animal for its protection pending appropriate court proceedings.

B. Exceptions

- 1) Humane Euthanasia performed by a Licensed Veterinarian, a Euthanasia Qualified Employee of the City of Truth or Consequences or a Euthanasia Authorized employee of the City of Truth or Consequences Animal Shelter.
- 2) Killing a bird if such bird is Poultry owned by that Person and will be used for food;
- 3) Killing a rabbit if such rabbit is owned by that Person and will be used for food;
- 4) Killing mice or rats that are not a Domestic Animal or otherwise claimed as a pet by any Person;
- 5) A Person may use poison to kill mice and rats, but only within a Person's own enclosed structures.
- 6) Except when applied by a licensed exterminator, no poison may be used outside, even on a Person's own property, or in any way in which a poisoned animal, including mice and rats, can consequently poison other Animals.
- 7) Generally accepted methods of animal training that do not cause undue physical and emotional suffering, including the training of Livestock, Companion Animals, Guard Dogs, hunting dogs, police dogs and Service Animals shall not constitute cruelty.

State law reference(s) - Cruelty to Animals; Extreme Cruelty to Animals, NMSA, § 30-18-1, Animals, NMSA, § 3-18-3.

SEC. 3-109. WORK CRUELTY.

It is unlawful for any person to drive or work any animal cruelly. When a Law Enforcement Officer or an Animal Control Officer has probable cause to believe that an animal has been cruelly treated, the officer may impound the animal for its protection pending appropriate court proceedings.

State law reference(s) - Cruelty to Animals; Extreme Cruelty to Animals, NMSA, § 30-18-1, Animals, NMSA, § 3-18-3.

SEC. 3-110. CARE AND MAINTENANCE.

- A. It is unlawful for any owner of an animal to fail, refuse, or neglect to provide said animal with proper and adequate necessities and medical care.

- 1) Food and Water.
 - i. Mammals and birds shall be provided with uncontaminated, edible, nutritious food, which is of adequate quantity as to maintain the normal weight and condition of a healthy animal. Additionally, the amount of food administered and feeding times must properly conform to the individual animal's age and condition. Food should be stored in a rodent proof and insect proof container. Open food must be kept in covered, washable

containers. Containers where food is stored shall be maintained and kept free of bacteria and contamination from rodents and insects as needed.

- ii. Mammals and birds shall be provided with constant access to a supply of unfrozen potable water in sufficient amount as to maintain good health as required by the species whether the animal is outdoors or indoors.

2) Cleanliness.

- i. The entire premises where an animal is kept shall be kept clean and in good repair in a manner which will protect animals from disease or injury. Feces and urine must be removed at least once daily from Companion Animal living quarters to prevent odors and possible dangerous or toxic exposure or contamination by fecal material, mold or internal and external parasites that could harm the animal or cause the spread of disease to other animals or humans.
- ii. All areas where animals are kept shall be maintained in a manner such that no animal can accidentally or intentionally come into contact with chemicals or other dangerous substances including, but not limited to, antifreeze that could potentially poison an animal. Food and cleaning supplies cannot be stored together. Provisions shall be made for the timely removal and proper disposal of animal and food waste, soiled bedding, dead animals, and debris. Disposal facilities and methodology shall minimize vermin infestation, odors and disease.
- iii. Areas where animals will be spending time shall be maintained to minimize the animal's exposure to fleas, ticks, flies, mosquitoes, ants, wasps, bees, or other insects that could potentially harm the animal or cause the animal discomfort.

3) Shelter and Shade.

- i. Animals that are not allowed free access to go inside a building must be provided with adequate shelter and shade. A structure that provides adequate shelter may not provide adequate shade: for example, a doghouse that protects the dog from wind and rain may be too hot inside when exposed to direct sunlight during the warmer months, so shade must also be provided.
 - (a) Outside housing for animals shall protect animals from any extreme weather conditions that may be detrimental to the health or comfort of the animals.
 - (b) Shelter for an animal must be waterproof, structurally sound, and have no protrusions that could injure animals.
 - (c) Feces and urine shall be removed from shelters as necessary to prevent animals from becoming soiled and to prevent odors, but under no circumstances less than twice each day.

- (d) Suitable drainage must be provided in all areas where animals are kept and there can be no standing water.

4) Space.

- i. Animals must be provided with adequate space to prevent overcrowding, allow animals to maintain normal exercise levels required by the species, size and temperament of the animal, and allow animals to walk, sit and lay down using normal motions and with their tail and limbs outstretched.

- (a) Minimum space required for cats. Indoor Requirements.

- a. Cats shall have a minimum of four (4) square feet of flat floor space and twenty-two (22) inches of vertical space.
 - b. Where there is more than one cat in an enclosure, additional floor and vertical space and resting perches are require. This does not include a cat with kittens.

- (b) Minimum space required for cats. Outdoor Requirements.

- a. Cats shall have a minimum of four (4) square feet of flat floor space and six (6) feet of vertical space.
 - b. Where there is more than one cat in an enclosure, additional floor and vertical space and resting perches are require. This does not include a cat with kittens.

- (c) Minimum space required for dogs. Indoor Requirements.

- a. Dogs weighing less than thirty (30) pounds shall have at least eight (8) square feet of flat floor space and two (2) feet of vertical space per dog.
 - b. Dogs weighing between thirty (30) and sixty-five (65) pounds shall have twelve (12) square feet of flat floor space and three (3) feet of vertical space per dog.
 - c. Dogs weighing more than sixty-five (65) pounds shall have twenty-four (24) square feet of flat floor space and three (3) feet of vertical space per dog.

- (d) Minimum space required for dogs. Outdoor Requirements.

- a. Dogs weighing less than thirty (30) pounds shall have at least eight (8) square feet of flat floor space and six (6) feet of vertical space per dog.
 - b. Dogs weighing between thirty (30) and sixty-five (65) pounds shall have twelve (12) square feet of flat floor space and six (6) feet of vertical space per dog.
 - c. Dogs weighing more than sixty-five (65) pounds shall have twenty-four (24) square feet of flat floor space and six (6) feet of vertical space per dog.

- (e) Minimum space required for birds.

- a. Birds must have enough room to spread their wings to their full width.
 - b. Birds must have at least two perches of different circumferences available to them.
- (f) Any other animals not specifically listed should be provided with adequate space to prevent overcrowding, allow animals to maintain normal exercise levels required by the species, size and temperament of the animal, and allow animals to walk, sit and lay down using normal motions and with their tail and limbs outstretched.
- 5) Medical and veterinary care.
 - i. Animals shall be provided with basic medical care in accordance with this Chapter as described by the definition of Basic Medical Care.
 - ii. Animals shall be provided Emergency Medical Care in accordance with this Chapter as described by the definition of Emergency Medical Care.
 - iii. No animal should ever be allowed to suffer due to a lack of basic medical care, injury or illness.
- 6) Animals shall be groomed in accordance with this Chapter as described by the definition of Basic Grooming as applicable to the species. Basic Grooming is necessary to maintain the eyes, ears, beaks, hooves, feet, hair and skin of an animal in healthy condition. Basic Grooming includes making sure that the toenails or hooves are not so long as to cause the animal to not move normally or to cause pain to the animal. Basic Grooming also includes providing the animal whatever it needs for self-grooming. No animal shall be allowed to have a coat that is matted to the point that it becomes so heavy as to cause skin irritation or trap fecal matter. The animal shall not be kept so dirty as to provide a home for insects. No animal shall be allowed to have foreign objects imbedded in its skin, fur or hair other than the Microchip.

State law reference(s) - Cruelty to Animals; Extreme Cruelty to Animals, NMSA, § 30-18-1, Animals, NMSA, § 3-18-3.

SEC. 3-111. UNCARED FOR ANIMALS.

- A. Whenever an Animal Control Officer finds that any animal is or will be without proper care because of injury, illness, and/or incarceration or as a result of the absence of the owner or person responsible for the care of such animal the Animal Control Officer may apply for a warrant with a court charged with enforcement of this Chapter to enter onto the property or premises where said animal is located and take up such animal for protective care; and in the event of sickness or injury of the animal, upon the instruction of a licensed veterinarian, the Animal Control Officer may take such action as called for to prevent undue pain and suffering, including immediate destruction of the animal.

- B. It is unlawful for any person to desert deliberately and/or to relinquish the supervision or care of any animal regardless of age or condition on one's premises or on property other than one's own without permission within the City of Truth or Consequences.

SEC. 3-112. INJURY TO ANIMAL BY MOTORIST.

- A. Every operator of a motor or other self-propelled vehicle upon the streets and ways of the City shall immediately, upon injuring, striking, maiming, or running down any Domestic Animal or Livestock, give such aid as is reasonably able to be rendered. In the absence of the owner, he/she shall immediately notify the Police, furnishing sufficient facts relative to such injury. It is the duty of such operator to remain at or near the scene until such time as the appropriate authorities arrive and, upon the arrival of such person, such operator shall immediately identify themselves to the appropriate authorities. Alternatively, in the absence of the owner, a person may give aid by taking the Domestic Animal or Livestock to a veterinary hospital or the Animal Shelter and notifying the Police.
- B. Such animal may be deemed an uncared-for animal within the meaning of Section 3-111 above.
- C. Emergency vehicles in the course of emergency duty are excluded from this provision with the exception of reporting the incident.

SEC. 3-113. ANIMALS IN VEHICLES.

- A. It shall be unlawful for any person to intentionally, knowingly, or recklessly leave or confine any animal in a closed vehicle for any period of time without adequate ventilation in a way that puts it in a life-threatening or extreme health-threatening situation due to prolonged heat or cold.
- B. An animal left in a vehicle without the interior of the vehicle being air conditioned when the interior temperature of the vehicle is over ninety degrees Fahrenheit (90°F) shall be prima facie evidence of a violation of this chapter.
- C. Animals being transported in the bed of a pickup truck must be protected from extreme temperatures and provided with a nonmetal surface to sit or stand on.
 - 1) No animal shall be left in the bed of a pickup truck whether in a crate or not when the weather is such that the animal will be exposed to extreme heat, cold, rain or snow.
- D. If an Animal Control Officer or Police Officer determines that an animal in a vehicle is in immediate danger, the Animal Control Officer or Police Officer may enter the vehicle by whatever means necessary, without being liable to the owner of the vehicle for any damages, and seize the animal. The animal's owner shall be responsible for all expenses related to the removal of the animal, emergency veterinary treatment and impoundment. If the Animal Control Officer or Police Officer cannot determine who confined the animal, the registered owner of the vehicle may be cited.
- E. Animals being transported in vehicles shall be restrained in accordance with Section 3-70.

State law reference(s) - Cruelty to Animals; Extreme Cruelty to Animals, NMSA, § 30-18-1, Animals, NMSA, § 3-18-3.

SEC. 3-114. KEEPING OF DISEASED OR PAINFULLY CRIPPLED ANIMALS.

It is unlawful for any person to have, keep, or harbor any animal which is afflicted with any incurable, or infectious disease or is in any painfully crippling condition, except as hereinafter provided. The Animal Control Officer may impound such diseased or painfully crippled animal in accordance with the provisions of this Chapter. All such animals impounded may be destroyed humanely as soon thereafter as is practicable. In the case of destruction of such animal, the Animal Control Officer shall be required to give any of the aforesaid notices provided in this Ordinance. This Section shall not be construed to include animals receiving veterinary care.

State law reference(s) - Cruelty to Animals; Extreme Cruelty to Animals, NMSA, § 30-18-1, Animals, NMSA, § 3-18-3.

SEC. 3-115. ANIMAL FIGHTS.

It is unlawful for any person to promote, stage, hold, manage, conduct, carry on, or attend any game, exhibition or contest in which one or more animals are engaged for the purpose or injuring, killing, maiming, or destroying themselves or any other animal. This includes any animal used as a "bait animal" as defined in the definitions of this Chapter.

State law reference(s) - Cruelty to Animals; Extreme Cruelty to Animals, NMSA, § 30-18-1, Dog Fighting and Cockfighting, NMSA, § 30-18-9, Animals, NMSA, § 3-18-3.

SEC. 3-116. FOWL.

It is unlawful for any person to confine any wild or domestic fowl or birds unless provisions are made by each person for the proper feeding and the furnishing of water to such fowl or birds at intervals not longer than twelve (12) hours. No person shall impound any wild or domestic fowl or birds in a crate, box or other enclosure, which does not permit each fowl or bird impounded therein to stand in a naturally erect position.

SEC. 3-117. MOLESTING OR TORMENTING ANIMALS.

It is unlawful for any person to torment, tease, annoy, disturb or molest any animal, by any means including but not limited to, throwing rocks, yelling, or giving chase in any manner, which is on the property of its owner, or under the control of its owner.

3-118. SONGBIRDS.

It is unlawful for any person to willfully kill any songbird, or to molest or rob the nest of such bird.

State law reference(s) - Songbirds; Trapping, Killing or Injuring Prohibited, NMSA, § 17-2-13.

SEC. 3-119. DRAGGING AND HOBBLING ANIMALS.

A person shall not hobble an animal, or tether or attach any animal to any object that can be dragged or moved by the animal. Such an animal, if not otherwise restrained by a secure tether or enclosure, shall be considered unrestrained. This shall not apply to Livestock animals being properly used for work purposes using commonly accepted methods.

SEC. 3-120. SCOPE OF SECTION; VIOLATIONS.

- A. It is expressly provided that Section 3-108 through Section 3-119 apply equally to Domestic Livestock, Exotic Animals, and Wild Animals in addition to dogs and cats.
- B. Violations of Section 3-108 through Section 3-119 are punishable by fines and/or imprisonment as set forth in Section 3-29.

SEC. 3-121. REPEAT OFFENSES.

- A. Three or more violations of any one or any combination of offenses in this Article shall constitute an act of cruelty. A repeat offender shall be deemed guilty of a misdemeanor, punishable by a minimum fine of \$100.00 and not exceeding \$500.00 and/or imprisonment for period not exceeding six (6) months upon conviction.
- B. In cases of repeat offenses under this Article (Article VII), an Animal Control Officer shall have the authority to impound any animal subjected to cruelty, neglect or abandonment. The animal may not be returned to its owner before a hearing in a court of proper jurisdiction if, in the opinion on of the Animal Control Officer, the harm to the animal is severe and likely to recur.
- C. In cases of repeat offenses for animals subjected to cruelty, neglect or abandonment, a judge with proper jurisdiction to enforce this Chapter may have such animal relinquished to the Animal Shelter, thereby extinguishing all property rights of the existing owner, provided the Animal Shelter Staff or an Animal Control Officer serves written notice upon the existing owner, informing him of the intent to have said animal adopted by another owner, and giving the existing owner three (3) business days to 1) declare his intent to maintain ownership of the animal and to object to the adoption, and 2) pay all impoundment, boarding, and veterinary costs, up to the date of the owner's declaration of intent to maintain his ownership of his animal. This intent must be stated in writing, signed by the animal's owner, and delivered to the Animal Shelter keeping the animal. The statement of intent and payment of fees and costs will serve to stop any animal adoption proceedings

SECS. 3-122 – 3-129. RESERVED.

ARTICLE VII. DEAD ANIMALS

SEC. 3-130. DISPOSAL.

- A. The owner/responsible party having care, custody or control of an animal carcass shall be responsible for its removal within 24 hours of death if the animal is not to be used for human consumption.
- B. An animal carcass may be disposed of in one of the following ways:
 - 1) Burial of the animal carcass on the owner's land under the following conditions:
 - i. The bottom of the burial pit must be at least three feet above the water table.
 - ii. If possible, choose a site where the soil is heavier and less permeable.
 - iii. Flat areas are best. Avoid areas sloping toward water or arroyos.
 - iv. Ensure the pit is sized to allow soil to cover mortalities to a depth of at least three feet.
 - 2) Cremation by a licensed facility where the remains can be sealed in an acceptable urn for return to the animal owner or disposed of by the facility.
 - i. The cremation of the carcass will be at the expense of the animal owner.
 - 3) The Animal Control Officer may remove any animal carcass from the roadway or other public property. The Animal Control Officer and/or T or C Animal Shelter staff shall make reasonable efforts to notify the animal's owner if known in the event of the animal's death.
 - i. Animal Control Officer may dispose of the animal carcass at the T or C Animal Shelter as authorized after microchip scanning and making reasonable efforts to notify the animal's owner. If an owner is located and request that the Animal Shelter dispose of the carcass, then the owner/responsible party will be responsible for the disposal fee.
 - ii. Animal Control Officer shall turn over any tags or other identification found on an animal carcass to the T or C Animal Shelter.
 - 4) The Animal Shelter may, but is not obligated to, provide for the removal of an animal carcass from private property at the request of the animal owner or property owner for a fee.
 - i. The fee amount shall be established by resolution; or
 - ii. The fee amount shall be established by most current rate schedule as provided by the current licensed facility, contracted with the City of Truth or Consequences, for cremation services.
 - 1. This fee schedule is based on the weight of the carcass.

(Ord. No. 725, 2-9-22)

SECS. 3-131 – 3-135. RESERVED.

ARTICLE IX. TAMPERING

SEC. 3-136. BREAKING INTO ENCLOSURE OR FACILITY.

Any person who shall in any manner break into or aid, directly or indirectly, in breaking into the enclosure, pound, center, or trap in which any animal is impounded or kept under authority of an Animal Control Officer or Law Enforcement Officer shall be guilty of a misdemeanor and sentenced under the provisions of Section 3-29.

SEC. 3-137. BREAKING INTO AN ANIMAL CONTROL VEHICLE.

It is unlawful for any person to break open any animal control vehicle wherein animals are impounded by the Animal Control Officer or Law Enforcement Officer, or in any other way to remove or assist in the removal of any animal from such vehicle without lawful permission. Offenders shall be guilty of a misdemeanor and sentenced under the provisions of Section 3-29.

(Ord. No. 725, 2-9-22)

SEC. 3-138. INTERFERING WITH AN ANIMAL CONTROL OFFICER.

It is unlawful for any person to interfere, hinder or molest any Animal Control Officer or Law Enforcement in the performance of their duties. Offenders shall be guilty of a misdemeanor and sentenced under the provisions of Section 3-29.

(Ord. No. 725, 2-9-22)

SEC. 3-139. INJURING OR TAMPERING WITH A FENCE, GATE OR SECURING DEVICE.

- A. It is unlawful for any person to intentionally, knowingly or willfully cut, damage, destroy, tamper with, unlock, remove or otherwise interfere with any fence, gate or other enclosure or securing device that they do not own for the purpose of releasing, allowing the escape of, or providing unauthorized access of any animal.
- B. Exceptions. The prohibitions of this Section shall not apply to:
 - 1) Law Enforcement Officers, Animal Control Officers or emergency responders acting within the scope of their official duties.
 - 2) Persons acting in good faith in an emergency, when such action is reasonably necessary to:
 - i. Prevent or reduce the threat of serious bodily injury or death.
 - ii. Rescue a person who is trapped, endangered, or otherwise in need of urgent assistance;
 - iii. Prevent significant harm to an animal when no reasonable alternative exists; or
 - iv. Property owners or lawful occupants accessing or repairing their own fences, gates or enclosures.

- C. Each animal allowed to escape as a result of a violation of this Section shall constitute a separate offense.

ARTICLE X. DANGEROUS AND POTENTIALLY DANGEROUS DOGS

SEC. 3-140. POTENTIALLY DANGEROUS DOGS.

A dog may be deemed potentially dangerous if the dog poses a reasonable threat to public safety as demonstrated by the following behaviors:

1. Causing an injury to a person, Domestic Animal or Livestock that is less severe than a serious injury; or
2. Chasing or menacing a person, Domestic Animal or Livestock in an aggressive manner and without provocation; or
3. Acting in a highly aggressively manner within a fenced yard or enclosure and appearing able to jump out of the yard or enclosure.

State law reference(s) - Dangerous Dog, Definitions, NMSA, § 77-1A-2.

SEC. 3-141. DANGEROUS DOGS.

A dog shall be deemed dangerous if it causes serious injury to a person, Domestic Animal or Livestock.

State law reference(s) - Dangerous Dog, Definitions, NMSA, § 77-1A-2.

SEC. 3-142. SEIZURE OF DANGEROUS DOGS.

- A. If an Animal Control Officer has probable cause to believe that a dog is a dangerous dog and poses an imminent threat to public safety, the Animal Control Officer may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.
- B. If an Animal Control Officer has probable cause to believe that a dog is a potentially dangerous dog and poses a threat to public safety, the animal authority may apply to a court of competent jurisdiction in the county where the animal is located for a warrant to seize the animal.
- C. After seizure, the Animal Control Officer will impound the dog pending disposition of the case or until the owner has fulfilled the requirements for a certificate of registration pursuant to the provisions of subsection (e) of this section.
- D. After seizure:
 - 1) The owner may admit that the dog is dangerous or potentially dangerous and comply with the requirements for a certificate of registration pursuant to subsection (e) of this section; or
 - 2) The Animal Control Officer may, within fourteen (14) days after seizure of the dog, bring a petition in a court of competent jurisdiction seeking a determination of whether the dog is dangerous or potentially dangerous. If the court finds, by

clear and convincing evidence, that the dog is dangerous and poses an imminent threat to public safety or potentially dangerous and poses a threat to public safety, the court shall order the owner to comply with the registration and handling requirements for the dog and obtain a certificate of registration within 30 days or have the dog humanely destroyed. If the court does not make the required findings pursuant to this paragraph, the court shall immediately order the release of the dog to the owner.

- E. If the owner does not admit that the dog is dangerous or potentially dangerous and the Animal Control Officer does not bring a petition in court within 14 days of seizure of the dog, the court shall immediately order the release of the dog to its owner.
- F. If the owner admits that the dog is dangerous and transfers ownership of the dog to the Animal Shelter, the Animal Shelter may humanely destroy the dog.
- G. A determination that a dog is not dangerous or potentially dangerous shall not prevent the Animal Control Officer from making a subsequent application for seizure based on the dog's subsequent behaviors.

State law reference(s) - Dangerous Dog, Definitions, NMSA, § 77-1A-4.

**SEC. 3-143. DANGEROUS AND POTENTIALLY DANGEROUS DOGS -
REGISTRATION REQUIRED.**

- A. Upon application, the City Clerk's Office shall issue a certificate of registration to the owner of a dangerous or potentially dangerous dog if the owner establishes that:
 - 1) The owner is able to keep the dog under control at all times; and
 - 2) A Companion Animal License Certificate, if applicable, has been issued pursuant to the requirements of the City; and
 - 3) The dog has a current rabies vaccination; and
 - 4) The owner has a proper enclosure to the dog; and
 - 5) The owner has paid an annual fee set by resolution to register a dangerous or potentially dangerous dog; and
 - 6) The dog has been spayed or neutered; and
 - 7) The dog has been implanted with a microchip containing owner identification information that is also provided to the animal control authority; and
 - 8) The owner has entered the dog in a socialization and behavior program approved or offered by the Animal Control Officer.
- B. If a dog previously determined to be dangerous or potentially dangerous has not exhibited any of the behaviors specified in this section for thirty-six (36) consecutive months, the owner may request the Animal Control Officer in the City to lift the requirements for registration pursuant to this section. If the Animal Control Officer has no reasonable basis to believe that the dog has exhibited the behaviors specified, it may relieve the owner of the requirements of this section.

C. An Animal Control Officer shall issue a certificate of registration to the owner of a dangerous dog if the owner, in addition to the requirements of Section 3-142(A), establishes that:

- 1) The owner has paid an annual fee set by resolution, as established by the animal control authority to register a dangerous dog; and
- 2) The owner has written permission of the property owner or homeowner's association where the dangerous dog will be kept, if applicable; and
- 3) The dangerous dog will be maintained exclusively on the owner's property except for medical treatment or examination; and
- 4) When the dangerous dog is removed from the owner's property, the dog shall be caged or muzzled and restrained with a lead no longer than four feet, and the dog shall be under complete control at all times; and
- 5) The dangerous dog will not be transported in a vehicle that might allow the dog to escape or gain access to any person or animal outside the vehicle; and
- 6) A clearly visible warning sign with a conspicuous warning symbol indicates there is a dangerous dog on the premises is posted where the dog is kept and is visible from a public roadway or from fifty (50) feet, whichever is less.

D. An Animal Control Officer may order the immediate impoundment or humane destruction of a dog previously determined to be a dangerous dog if the owner fails to comply with the conditions for registration, confinement or handling set forth in this section.

State law reference(s) - Dangerous Dog, Definitions, NMSA, § 77-1A-5.

SEC. 3-144. DANGEROUS AND POTENTIALLY DANGEROUS DOGS – PROHIBITED ACTS.

A. It is unlawful for an owner of a dangerous or potentially dangerous dog to:

- 1) Keep the dog without a valid certificate of registration; or
- 2) Violate the registration and handling requirements for the dog; or
- 3) Fail to notify an Animal Control Officer immediately upon:
 - i. The escape of the dog; or
 - ii. An attack by the dog upon a human being, Domestic Animal or Livestock;
- 4) Fail to notify the animal control authority of the dog's death within five business days; or
- 5) Fail to notify an Animal Control Officer within twenty-four (24) hours if the dog has been sold or given away and to provide the name, address and telephone number of the new owner of the dog; or
- 6) Fail to surrender the dog to an Animal Control Officer for safe confinement pending a determination of the case where there is reason to believe that the dog poses an imminent threat to public safety; or

- 7) Fail to comply with special handling or case requirements for the dog that a court has ordered.

State law reference(s) - Dangerous Dog, Definitions, NMSA, § 77-1A-6.

SEC. 3-145. PENALTIES.

- A. A person who violates any section or provision of this Article X (Sections 3-140 through 3-145) shall be charged in the court charged with jurisdiction to enforce this Chapter and upon conviction may be sentenced a minimum fine of \$250.00 not to exceed \$500.00 or 90 days imprisonment or both fines and imprisonment.
- B. The court may order the owner to relinquish the dog to the Animal Shelter for humane destruction.

State law reference(s) - Dangerous Dog, Definitions, NMSA, § 77-1A-6.

ARTICLE XI. WILD OR EXOTIC ANIMALS

SEC. 3-145. EXOTIC AND WILD ANIMALS.

- A. No person shall keep, own or harbor any species in violation of federal law, New Mexico law or this section.
- B. No person shall keep any exotic or Wild Animal as defined in this Chapter by the definition of Exotic or Wild Animal except where 1) adequate protective devices are provided to prevent such animals from escaping or injuring the public, and 2) a proper license is obtained in accordance with section 3-146. If such requirements are met, they may be kept in a zoological park, pet shop, veterinary hospital, animal shelter, public laboratory, circus, amusement show, educational facility, scientific facility, or in the control of a humane society.

(Ord. No. 725, 2-9-22)

State law reference(s) - Sale, Purchase, Trade and Possession of Certain Animals Regulated, NMSA, § 77-18-1.

SEC. 3-146. EXOTIC AND WILD ANIMAL PERMIT.

- A. Any person who keeps, harbors or owns an Exotic Animal or Wild Animal covered by this section at the time of enactment of this Chapter shall obtain an Exotic or Wild Animal Permit from the City. A fee set by resolution shall be charged for the Exotic or Wild Animal Permit through the City.
 - 1) An Exotic or Wild Animal Permit holder shall immediately notify an Animal Control Officer or City Clerk upon the death of the animal.
 - 2) An Exotic or Wild Animal Permit holder shall immediately notify an Animal Control Officer or Police Officer upon the escape of the Animal.
- B. An Animal Control Officer shall use seizure procedures which protect the public, the exotic or Wild Animal and other animals to seize any exotic or Wild Animal kept in

contrary to this section or for its owner's failure to obtain an Exotic or Wild Animal Permit. Such animal shall become property of the City. The Exotic or Wild Animal Permit holder or owner of the exotic or Wild Animal is liable for any costs incurred by the City and such costs may be the result of a lien being place against the Exotic or Wild Animal.

- C. For the purpose of this section, any person or Animal Control Officer who is utilizing a humane live trap for exotic or Wild Animals, vermin, or domesticated dogs or cats which may be a menace to the public may not be considered as keeping, owning or harboring such animals. Trapping shall be done in accordance with New Mexico State law.

(Ord. No. 725, 2-9-22)

ARTICLE XII. PERMITTED PREMISES, REGULATIONS, LICENSES AND FEES

SEC. 3-147. GUARD DOGS.

Anyone using or keeping a dog for the sole purpose of guarding a property, and neither as a pet nor for hunting uses, must obtain a Guard Dog Site Permit from the City in addition to all other applicable provisions of this Chapter:

1. A Guard Dog shall not be used to guard residential property.
2. Only one Guard Dog is allowed on a property at any given time.
3. The permit application shall include sufficient information to identify the owner of the commercial property, the name and address of the owner of the Guard Dog, and the location intended to be guarded by the Guard Dog.
4. The permit applicant shall submit the application to the City Clerk's Office and submit to a pre-permit inspection of the premises by an Animal Control Officer so that an accurate physical description of the animal may be obtained.
5. The applicant must provide to the City proof of vaccination of the Guard Dog as set in Section 3-68 of this Chapter.
6. The applicant must provide to the City proof of licensing as set in Section 3-69 of this Chapter and microchipping of the Guard Dog as set in Section 3-74 of this Chapter. Proof of licensing and microchipping must be provided annually during renewal of the permit.
7. The permit applicant shall pay the Guard Dog Site Permit fee before a permit may be obtained. The permit holder shall, thereafter, pay an annual Guard Dog Site Permit fee. The permit application and annual permit fees shall be set by resolution by the City.
8. The permit applicant must submit to an annual inspection of the property by an Animal Control Officer before a permit may be renewed.
9. Prior to obtaining the permit, the permit applicant shall obtain liability insurance in this state providing coverage in each occurrence, subject to a limit, exclusive of

- interests and costs, of not less than \$100,000.00 for damage or bodily injury to or death of a person caused by the Guard Dog.
10. The enclosure surrounding the property protected by a Guard Dog must be secure at all times so as to prevent the dog from running at large, unless the owner complies with Section 3-70.
 11. The enclosure surrounding the property must be of sufficient height and strength to contain the Guard Dog within the premises to prevent unauthorized entry and access of animals and people onto the property.
 12. A Guard Dog may only be chained in order to supplement any enclosure. A chain shall not be the only form of restraint for a Guard Dog.
 13. If chained, the animal must be located within 10 feet of the entrance of the building or premises to be guarded and chained in such manner as set forth in Section 3-70.
 14. The owner of the Guard Dog shall post warning signs prominently on all sides of the premises and on all entryways to the premises, stating that a Guard Dog is on the premises.
 - i. Warning signs should be at least twelve (12) inches long on each side.
 - ii. Warning signs shall state "Guard Dog" and "Guardia" and shall show a picture of an aggressive dog.
 - iii. Signs should not be more than fifty (50) feet apart on all exterior fences or walls surrounding the site and shall be posted at all exterior corners of the site and every entrance to the site.
 - iv. Signs shall be maintained in such a manner to maintain their effectiveness.
 15. Vehicles used to transport Guard Dogs shall be secured so the public is protected from injury, shall be constructed or modified to ensure that the Guard Dog is transported in a safe, humane manner and that does not violate Section 3-113, and shall be posted with warning signs on each side of the vehicle.
 16. The City may at any time revoke a Guard Dog Site Permit for any and all violations of this Chapter.
 17. Nothing in this section shall prohibit an Animal Control Officer from placing a Guard Dog on a quarantine and/or seizing a Guard Dog as set by provisions of this Chapter and/or applicable state laws.
 18. An application may be denied if the applicant or animal owner shows a history of noncompliance with sections contained in this chapter as evidenced by two or more convictions of violations during the preceding 12 months. Any past city permits or license revocations may be considered in decision making process of whether to approve or deny a permit under this section.

19. A Guard Dog Site Permit holder shall not apply for a litter permit, Multi-Animal Site Permit or Kennel Permit for the Guard Dog Site. No breeding, boarding or sale of Animals is allowed at a Guard Dog Site.

20. Guard Dog Site Permits shall not be issued to any premises within five-hundred (500) feet of any school zone, daycare, public park or dog park.

SEC. 3-146. MULTI-ANIMAL SITE PERMIT AND KENNEL PERMITS.

A. Multi-Animal Site Permits

- 1) It shall be unlawful for a property owner, tenant, lessee, or authorized resident of said property, to possess or harbor more than four Companion Animals in any combination thereof, three months of age or older on their residential or business premises without a Multi-Animal Site Permit.
- 2) Any person who operates or proposes to operate a residential or commercial Multi-Animal Site shall file an application for a permit with the City Clerk's Office, describing the location of the site, and the purpose for which it is to be maintained. An initial non-refundable fee, established by resolution, for residential or commercial Multi-Animal Sites must accompany any application to defray the cost of processing the request.
- 3) An onsite visit of the premises shall occur by an Animal Control Officer and designated zoning official or administrator upon the submission of an application. All initial applications will go before the City's Planning and Zoning Board to verify compliance with this section and/or other applicable zoning regulations. If any provision of this section is in conflict with the provision of any applicable zoning regulation, the provision of the zoning regulation shall control.

The following requirements must be met during the onsite visit:

- i. All Companion Animals listed on the application three months of age or over must be vaccinated in accordance with Section 3-68 of this Chapter and possess a city Companion Animal License Certificate.
- ii. All Companion Animals must be implanted with a Companion Animal Microchip or must possess a city animal license tag.
- iii. All Companion Animals must have access to Adequate Food.
- iv. All Companion Animals must have access to Adequate Water.
- v. All Companion Animals must have access to Adequate Shade.
- vi. All Companion Animals must have access to Adequate Shelter.
- vii. Each Companion Animal must meet all requirements as set by Section 3-110 of this Chapter, including minimum space requirements per Companion Animal, cleanliness requirements, basic and emergency medical care and access to environmental enrichment.
- viii. Site must comply with provisions set by Section 3-91 of this Chapter and Section 3-92 of this Chapter in order to prevent Companion Animals from

creating a public nuisance by noxious or offensive odors and disturbing the peace by creating noise common to its species.

ix. Site must comply with Section 3-70 of this Chapter.

- 4) There shall not be more than seven Companion Animals in any combination thereof for multi-animal residential or commercial site permits.

B. Kennel Permits

- 1) If a business premises is being used for the buying, selling, breeding, training, fostering, rescuing, or boarding of Companion Animals, said business shall apply for a Kennel Permit.
- 2) Any person who operates or proposes to operate a Kennel shall file an application for a permit with the City Clerk's Office, describing the location of the site, and the purpose for which it is to be maintained. An initial non-refundable fee, established by resolution, for Kennel sites must accompany any application to defray the cost of processing the request.
- 3) An onsite visit of the premises shall occur by an Animal Control Officer and designated zoning official or administrator prior to a hearing before the City's Planning and Zoning Board to verify compliance with this section and/or other applicable zoning regulations. If any provision of this section is in conflict with the provision of any applicable zoning regulation, the provision of the zoning regulation shall control.
- 4) The following requirements must be met during the onsite visit:
 - i. Kennel Permit applicants that are using their permit for commercial purposes shall be required to also apply for a city business license as per (Sec. 7-32. - Application to do business). All other Kennel Permit applicants must provide proof they are a part of a valid nonprofit animal welfare organization.
 - ii. All Companion Animals listed on the application three months of age or over must be vaccinated in accordance with Section 3-68 of this Chapter.
 - iii. All Companion Animals must have access to Adequate Food.
 - iv. All Companion Animals must have access to Adequate Water.
 - v. All Companion Animals must have access to Adequate Shade.
 - vi. All Companion Animals must have access to Adequate Shelter.
 - vii. Each Companion Animal must meet all requirements as set by Section 3-110 of this Chapter, including minimum space requirements per Companion Animal, cleanliness requirements, basic and emergency medical care and access to environmental enrichment.
 - viii. Site must comply with provisions set by Section 3-91 of this Chapter and Section 3-92 of this Chapter in order to prevent Companion Animals from creating a public nuisance by noxious or offensive odors and disturbing the peace by creating noise common to its species.

ix. Site must comply with the provisions of Section 3-70 of this Chapter.

- 5) The maximum Companion Animal occupancy for Kennel Permits shall be determined based upon the recommendation of an Animal Control Officer or designated zoning official or administrator to ensure there is adequate space and adequate shelter to ensure sanitary and safe conditions.

C. Denial and Revocation of Multi-Animal Site or Kennel Permits

- 1) An application may be denied if the applicant or Companion Animal owner shows a history of noncompliance with sections contained in this chapter as evidenced by two or more convictions of violations during the preceding 12 months. Any past city permit or license revocations may be considered in decision making process of whether to approve or deny a permit under this section.
- 2) An application may be denied or revoked if the Multi-Animal Site or Kennel Site does not comply with requirements set in Section 3-110 of this Chapter.
- 3) An application may be denied or revoked if the Multi-Animal Site or Kennel Site does not comply with requirements set in Section 3-91 of this Chapter.
- 4) An application may be denied or revoked if the Multi-Animal Site or Kennel Site does not comply with requirements set in Section 3-92 of this Chapter.
- 5) An application may be denied or revoked if the Multi-Animal Site or Kennel Site does not comply with requirements set in Section 3-70 of this Chapter.
- 6) An application may be denied if two or more unrelated adult witnesses from unrelated residences reports violations of this Chapter or if one adult witness with recorded video shows a violation of this Chapter.
- 7) A Multi-Animal Site Permit or Kennel Permit may be revoked when, in the opinion of the designated zoning official or administrator or Animal Control Officer, any one or more the following conditions exist:
 - i. The premises or enclosures are not maintained in a clean, safe, and sanitary condition and are a health, fire, or public safety hazard or produce noxious odors.
 - ii. The number of Companion Animals exceeds the number allowed under the permit.
 - iii. Any other violation listed under this chapter or sections.
- 8) In cases where a Multi-Animal Site Permit or Kennel Permit is revoked, the permittee shall be notified in writing via the mailing address listed on their permit application. The revocation letter shall state the reasons said permit has been revoked and the option to file a written appeal with the City Manager or their designee within ten business days of the date listed on the revocation letter. Written appeals shall be hand delivered to City Clerk's Office within the allotted timeframe. The City Manager or their designee may review the appeal and reverse the decision, modify the decision, or deny the appeal and upheld the initial revocation.

- 9) If a Multi-Animal Site Permit or Kennel Permit has been revoked, said applicant and/or location of where the permit was issued shall not be allowed to apply or obtain another permit within city limits for a period of at least two years from the date of revocation.
- 10) Multi-Animal Site Permits and Kennel Permits shall not be issued to any premises which has a Guard Dog Site Permit.

D. Provisions

- 1) All multi-animal residential or commercial site permits, and Kennel Permits must be renewed annually at a fee established by resolution. Renewal applications must be submitted to the City Clerk's Office for processing. A non-refundable fee, established by resolution shall be charged, and an onsite visit of the premises shall occur by an Animal Control Officer and designated zoning official or administrator. Annual renewals up to 3 years are not required to go before the Planning & Zoning Board and can be approved by an Animal Control Officer, designated zoning official, or administrator. However, the Animal Control Officer and designated zoning official or administrator can request that an application renewal go before the Planning & Zoning Board if deemed necessary.
- 2) Multi-Animal Site and Kennel Permit holders shall allow an Animal Control Officer, police officer, designed zoning official or administrator or other city official to enter and inspect the premises for compliance with this section and/or any other city municipal code or ordinances during normal business hours.
- 3) Upon receipt of payment of a Multi-Animal Site or Kennel Permit application fee, the City Clerk's Office shall forward the application to the Planning and Zoning Department and Animal Control Officer. All initial applications for Multi-Animal Site and Kennel Permits shall undergo a special use permit process pursuant to the procedure detailed in section 11-5-6 of the City's Planning and Zoning Code.
- 4) Veterinary hospitals or clinics shall be exempt from the Kennel Permit licensure requirement of this chapter unless the veterinary hospital or clinic engages in the non-veterinary medical boarding of Companion Animals.

(Ord. No. 725, 2-9-22)

SEC. 3-149. LICENSE FEES.

- A. The annual license fee shall be set by resolution for each neutered or spayed Companion Animal.
- B. The annual license fee shall be set by resolution for each intact Companion Animal.
- C. A fee shall be charged for each Companion Animal that has not been spayed or neutered, unless the owner presents a signed statement from a licensed veterinarian stating that spaying or neutering would be a surgical risk for the Companion Animal, due to the Companion Animal's age or condition.
- D. No fee shall be charged for licensure of a Companion Animal implanted with a microchip that is registered by the appropriate microchip company provided the owner of the

Companion Animal provides the City with the microchip number and fulfills all requirements set by Section 3-69(D).

SECS. 3-150 – 3-156. RESERVED.

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS. CITY COMMISSIONERS
OF THE CITY OF TRUTH OR CONSEQUENCES:**

Section 1. All Ordinances or Resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This Repealer shall not be construed to revive any Ordinance or Resolution or part thereof, heretofore repealed.

Section 2. This Ordinance shall take effect on the 25th day of February, 2026.

PASSED, APPROVED AND ADOPTED this 25th day of February, 2026.

CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO

BY: _____
Rolf Hechler – Mayor

ATTEST: _____
Angela A. Torres – City Clerk



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: F.1

SUBJECT: Purchase Requisitions between \$20,000 and \$59,999.99 Thousand
DEPARTMENT: Procurement
DATE SUBMITTED: February 19, 2026
SUBMITTED BY: Carlos Miyagishima, Chief Procurement Officer
WHO WILL PRESENT THE ITEM: Carlos Miyagishima, Chief Procurement Officer

Summary/Background:

Per Resolution No 46 20/27 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases Over \$60,000).

Recommendation:

Approval Recommended by Chief Financial Officer. Please see the attached purchase item list.

Attachments:

- Emergency Grants Funds
- Coyote HVAC LLC
- Freezer/Freezer Walk-in Emergency Repairs SJOA

-

Fiscal Impact (Finance): Yes

- \$34,210.00
- A22G2019-G614 Emergency Grant Funds

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☐ Legal ☒ Other: Carlos Miyagishima, Chief Procurement Officer

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. [Click here to enter text.](#)

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC agendas 2-25-26

**PURCHASE ORDER FROM JANUARY 21, 2026-PRESENT-MANAGER APPROVED: \$20,000
THROUGH \$59,999.00. MANAGER APPROVED COMMISSION REPORT:**

1 record found

Issue Date	Number	Department Name	Vendor Name	Vendor Number	Total	Description
2/2/2026	83050	Community Develop	COYOTE HVAC LLC	9066	34,210.00	FRIDGE/FREEZER WALKIN

Reviewed By CPO On: 2/19/2026

ACCEPTED:

YES:

No:

Additional Comments:

Mayor Ralph Hechler

(If required.)

City Clerk Attest:

(If required.)

*See Attached POs

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims St.

Truth or Consequences, NM 87901

PH: (575) 894-6673

FAX: (575) 894-0363

PURCHASE ORDER**PO Number:** 83050**Date:** 02/02/2026**Requisition #:** 95890**Vendor #:** 9066**ISSUED TO:** COYOTE HVAC LLC
4300 N VALLEY DR
LAS CRUCES, NM 88007-**SHIP TO:** COMMUNITY DEVELOPMENT
401 McAdoo St.
Truth or Consequences, NM 87901

ITEM	UNITS	VENDOR PART #	DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0		FRIDGE/FREEZER WALKIN EMERGENCY REPAIRS KEN JAMES SENIOR CENTER SJOA A22G2019-G614 Emergency Grant Funds FRIDGE/FREEZER WALKIN EMERGENCY REPAIRS	304-7071-80805		0.00	34,210.00

SUBTOTAL:	34,210.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	34,210.00

Chief Purchasing Office

Date:

2/2/2026

Director of Finance:

Requisition approved electronically.

City Manager:

Requisition approved electronically.

1. Send INVOICE to Accounts Payable, address as noted above.
2. Prepay all transportation charges, and attach receipted freight bill to invoice.
3. Show our Purchase Order number on all invoices, Bills of Lading, Packages, etc.
4. This order must NOT be filled in greater or lesser quantities than shown without our written permission.
5. This order is issued with the understanding that if material is not according to our specifications, same will be returned at seller's expense.
6. The right is reserved to cancel this order if not filled within a reasonable length of time.
7. The City is exempt from all federal excise and state tax - ID# 01-405755-007



REQUISITION

Requisition #: 95890

Date: 01/30/2026

Vendor #: 9066

ISSUED TO: COYOTE HVAC LLC
4300 N VALLEY DR
LAS CRUCES, NM 88007-

SHIP TO: COMMUNITY DEVELOPMENT
401 McAdoo St.
Truth or Consequences, NM 87901

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 FRIDGE/FREEZER WALKIN EMERGENCY REPAIRS COYOTE MECHANICAL \$34,210.00 R&B COMMERCIAL SERVICES \$35,895.19 CROWN - NO QUOTE RECIEVED 2 EMAILS INQUIRIES SENT		0.00 304-7071-80805	34,210.00
PO Description: FRIDGE/FREEZER WALKIN EMERGENCY REPAIRS SJOA Detailed Description: KEN JAMES SENIOR CENTER SJOA A22G2019-G614 Emergency Grant Funds FRIDGE/FREEZER WALKIN EMERGENCY REPAIRS COMM. DEV.				

Authorized By: _____

SUBTOTAL:	34,210.00
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	34,210.00



New Mexico Aging & Long-Term Services Department

Michelle Lujan Grisham, Governor
 Emily Kaltenbach, Cabinet Secretary
 Antoinette Vigil, Deputy Cabinet Secretary
 Angelina Flores-Montoya, Deputy Cabinet Secretary

APPROPRIATION RECIPIENT:

Grantee: City of Truth or Consequences
 Contact: Traci Alvarez, Asst. City Manager, talvarez@torcnm.org, 575.952.0565
 Facility: Ken James Senior Center (SJOA)
 Address: 360 West 4th Street, T or C, NM 87901

<u>APPROPRIATION NUMBER:</u>	<u>APPROPRIATION AMOUNT:</u>	<u>APPROPRIATION TERM DATE:</u>
A22G2019-G614	\$36,710.00	June 30, 2026

APPROPRIATION LANGUAGE

In Laws 2022 Chapter 53, Section 5, Paragraph 17 - \$1,000,000 was identified for FY2022 through FY2026 for emergency requests to plan, design, renovate, improve, equip, and furnish senior centers, including delivery and installation of building systems, purchase and installation of meals equipment, and purchase and equip vehicles for senior centers statewide.

CERTIFICATION

I hereby certify that City of T or C, Ken James Senior Center (SJOA).

1. Only the appropriated funds will be used for permissible purposes as described in the appropriation language.
2. Will comply with the State Procurement Code and execution of binding written obligations or purchase orders with third-party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the project (if applicable).
3. Ensures that the appropriated funds only benefit entities per applicable law, including, but not limited to Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
4. Follow the procedure described in "Appropriation Reimbursement" to reimburse appropriated funds.

APPROPRIATION REIMBURSEMENT

The appropriation funds will be disbursed through a reimbursement process. The Appropriation Recipient will submit to the Agency Exhibit A: Request for Payment form along with supporting document(s) that evidence the expenses to be reimbursed. The Agency will review these documents to ensure all reimbursed expenses reflect the intent and purpose of the appropriation language. All expenditures for which the Appropriation Recipient requests reimbursement must occur before the reversion date. The latest date the Appropriation Recipient may submit a Request for Payment for FY26 (July 1, 2025 – June 30, 2026) is June 30th, 2026. With the submission of the final Exhibit A: Request for Payment, the Appropriation Recipient must include the completed Exhibit B: Final Report form to receive the final reimbursement.

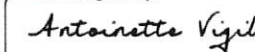
 Rolf Hechler - Mayor
 Grantee Chief Elected Official Signature / Printed Name

12-23-2025
 Date

AUTHORITY

The State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law. I hereby approve this certification for the appropriation number.

DocuSigned by: Fridge/Freezer Combo for the Ken James Senior Center.

 Antoinette Vigil
 B700305A87474B3
 ALLSD Designee signature

12/23/2025
 Date



New Mexico Aging & Long-Term Services Department

Michelle Lujan Grisham, Governor
Emily Kaltenbach, Cabinet Secretary
Antoinette Vigil, Deputy Cabinet Secretary
Angelina Flores Montoya, Deputy Cabinet Secretary

APPLICATION FOR EMERGENCY FUNDING

In Laws 2022 Chapter 53, Section 5 - \$1,000,000 was identified for FY2023 through FY2026 for emergency requests to plan, design, renovate, improve, equip and furnish senior centers, including delivery and installation of building systems and purchase and installation of meals equipment, and to purchase and equip vehicles for senior centers statewide.

ALTSD is seeking requests for funding that did not meet the \$10K threshold for capital outlay funding through the normal application process, or a project request that demonstrates an urgent or critical need to carry out a service offered at the senior center, and that without the asset, would disrupt a senior center from operating or failure is imminent.

Use of the asset must comply with NM Constitution Article IX, Section 14 (Anti-Donation Clause). A license to use agreement must be in place to allow a non-profit provider use of the asset. The asset must meet the useful life criteria of 7 - 10 years. The asset must be maintained by the local public body. Capital outlay funds cannot be used for indirect program costs or operating expenses, and items that are not tangible.

The local public body must agree to the conditions and restrictions of the grant agreement. The expense must be made and reimbursement for qualifying expenses submitted on the prescribed forms, including the copy of the purchase order, copy of the invoice and copy of the cancelled check within the quarter the expense was made.

DATE: 12-4-2025

APPLICANT NAME: City of Truth or Consequences

CENTER NAME and ADDRESS: Ken James Senior Center

CONTACT NAME: Traci Alvarez-Assistant City Manager PHONE NUMBER: 575-952-0565 EMAIL: talvarez@torcnm.org

Provide a brief description of the individual requested asset, age of the asset (if applicable), and justification for need:

2006 Combo Fridge/Freezer Walk ins - Freezer has experienced issues requiring a repairman 3x
in one year. Part replacement is difficult due to age. It has outlived its useful life and if it goes down there is
no way to safely store food.

ASSET DESCRIPTION: Combo Fridge/Freezer Walk in

COST OF THE ASSET(S): \$ 36,710.00 Delivery & installation, if applicable \$ _____

TOTAL AMOUNT OF THE REQUEST: \$ 36,710.00

(provide copies of cost estimates or quotes in support of the request)

Brief description of the outcome of not receiving the funding and what services will be disrupted and how many seniors will be affected:

The senior center serves an average of 350 meals daily to seniors within Sierra County. Without a fridge/freezer
we would be unable to properly store food and therefore unable to serve meals to the seniors.

PRINTED NAME: Traci Alvarez

TITLE: Assistant City Manager

CHIEF ELECTED OFFICIAL SIGNATURE: _____

Internal Use Only:

Capital Outlay Bureau Chief Signature: _____

Signed by:

Tasha Martinez
CD28FF760BEC496

Date: 12/9/2025



Coyote HVAC LLC

4300 North Valley Drive | Las Cruces, New Mexico 88007
406-577-6775 | coyotehvacnm@gmail.com

RECIPIENT:

Sierra Joint Office on Aging

360 West 4th Street
Truth or Consequences, New Mexico 87901

Estimate #174

Sent on Nov 21, 2025

Total \$36,710.00

Product/Service	Description	Qty.
LCH0008MBAC	Outdoor condenser for walk in Cooler 208/230V-449A	1
LEL0095	Walk in Cooler evaporator unit with Intellegen control system and all components of operation- 115V	1
LCH0025-Low temp	Low temp outdoor condensing unit (freezer) 208-230 V -449A	1
LEL0100B-Low temp	Indoor evaporator for walk in freezer with intellegen control and electric defrost timer and control operation.	1
R449A- refrigerant	R449A- Refrigerant to replace 404A	30
Labor- Walk in refrigeration install	Labor to remove old walk in cooler and walk in freezer equipment. Install new equipment with factory warranty. New equipment is a 449 based system.	1
Consumables	Miscellaneous Consumables: Nitrogen, oil, disposable items, Brazing rod, vacuum . Drain parts	1
Trip Charge	Trip Fees	1
Line set	3/8-3/4 -1/2 line set for A/C unit 35 feet	2
electrical parts	wire, conduit, misc wiring parts	2
Shipping/Freight	Shipping and/or Freight costs* estimated shipping costs from the factory- 3-4 week lead time from order	1

A deposit of \$18,355.00 will be required to begin.

Total \$36,710.00

This quote is to replace all equipment for 2 walk in coolers and for 2 walk in freezers. This includes all warranty coverage and installation components.

This quote is valid for the next 30 days, after which values may be subject to change.

Signature: _____ Date: _____

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

Notice of Obligation to Reimburse Grantee [# 1]

DATE: 1-2-2026

TO: Department Representative: AGING & LONG-TERM SERVICES DEPARTMENT

FROM: Grantee: City of Truth or Consequences Grantee Official Representative: Traci Alvarez

Grantee Address: 505 Sims Street T or C, NM 87901

Name of Senior Center: Ken James Senior Center

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: A22G2019-G614

Grant Termination Date: 06/30/2026

As the designated representative of the Department for Grant Agreement number A22G2019-G614 entered into between the Grantee and the Department, I certify that the Grantee has submitted to the Department the following third-party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: Coyote Mechanical LLC

Third Party Obligation Amount: \$34,210.00

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within The scope of the project description, subject to all the terms and conditions of the above-referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \$ 36,710.00

The Amount of this Notice of Obligation: \$ 34,210.00

The Total Amount of all Previously Issued Notices of Obligation: \$ 0.00

The Total Amount of all Notices of Obligation to Date: \$ 34,210.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department P____ Signed by: Tasha Martinez Title: Bureau Chief

Signature: Tasha Martinez Date: 1/13/2026

Please ensure that all estimates and/or quotes are included with the Notice of Obligation (NOO).

Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

NOO Revised: 10-14-2025 **PLEASE SUBMIT TO: capital.outlay@altsd.nm.gov**



Coyote Mechanical LLC

3401 Waterloo Circle | Billings, Montana 59101
406-577-6775 | coyotehvacnm@gmail.com

RECIPIENT:

Sierra Joint Office on Aging
360 West 4th Street
Truth or Consequences, New Mexico 87901

Estimate #174

Sent on Dec 29, 2025

Total \$34,210.00

Product/Service	Description	Qty.
LCH0008MBAC	Outdoor condenser for walk in Cooler 208/230V-449A	1
LEL0095	Walk in Cooler evaporator unit with Intellegen control system and all components of operation- 115V	1
LCH0025-Low temp	Low temp outdoor condensing unit (freezer) 208-230 V -449A	1
LEL0100B-Low temp	Indoor evaporator for walk in freezer with intellegen control and electric defrost timer and control operation.	1
R449A- refrigerant	R449A- Refrigerant to replace 404A	30
Labor- Walk in refrigeration install	Labor to remove old walk in cooler and walk in freezer equipment. Install new equipment with factory warranty. New equipment is a 449 based system.	1
Consumables	Miscellaneous Consumables: Nitrogen, oil, disposable items, Brazing rod, vacuum . Drain parts	1
Trip Charge	Trip Fees	1
Line set	3/8-3/4 -1/2 line set for A/C unit 35 feet	2
electrical parts	wire, conduit, misc wiring parts	2
Shipping/Freight	Shipping and/or Freight costs* estimated shipping costs from the factory- 3-4 week lead time from order	1

Subtotal	\$36,710.00
Discount	- \$2,500.00
Total	\$34,210.00

This quote is to replace all equipment for 2 walk in coolers and for 2 walk in freezers. This includes all warranty coverage and installation components.

This quote is valid for the next 30 days, after which values may be subject to change.

Signature: _____ Date: _____



Coyote Mechanical LLC

3401 Waterloo Circle | Billings, Montana 59101
406-577-6775 | coyotehvacnm@gmail.com

RECIPIENT:

Sierra Joint Office on Aging

360 West 4th Street
Truth or Consequences, New Mexico 87901

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This quote is to replace all equipment for 2 walk in coolers and for 2 walk in freezers. This includes all warranty coverage and installation components.

This quote is valid for the next 30 days, after which values may be subject to change.

Signature: _____ Date: _____

From: cwalton@seniorcenter-sjoa.org
To: Alvarez, Traci
Subject: FW: SJOA walk in fridge freezer quote
Date: Tuesday, December 23, 2025 9:41:54 AM

From: cwalton@seniorcenter-sjoa.org <cwalton@seniorcenter-sjoa.org>
Sent: Tuesday, December 23, 2025 9:37 AM
To: 'support@nmcrown.com' <support@nmcrown.com>
Subject: RE: SJOA walk in fridge freezer quote

Just wanted to follow up to see about this quote and the charge to get it. Thanks

From: cwalton@seniorcenter-sjoa.org <cwalton@seniorcenter-sjoa.org>
Sent: Wednesday, December 17, 2025 2:16 PM
To: 'support@nmcrown.com' <support@nmcrown.com>
Subject: SJOA walk in fridge freezer quote

The SJOA is looking for a quote for the above listed combo walk-in fridge freezer.
The dimensions are 9ft long 7ft tall and 6.5 feet wide per fridge side and the same size for the freezer side.

Thank you

Crystal Walton
Executive Director
cwalton@seniorcenter-sjoa.org
Sierra Joint Office on Aging
360 W 4th Ave T or C NM 87901
575-894-6641



ESTIMATE

R & B Commercial Service Inc.

FOODSERVICE EQUIPMENT - COMMERCIAL REFRIGERATION

3110 Los Arboles Ave. NE

Albuquerque, NM 87107

Phone 505.889.4090 Fax 505.889.3845

12/11/2025

BRANDON@RBCOMMSERV.COM

Valid for 60 days

TO	<u>SJOA Senior Center</u> 360 W. Fourth Ave. Truth or Consequences New Mexico 87901	The price of the equipment to be paid before ordering.
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SALESPERSON	JOB	PAYMENT TERMS	DUE DATE
Brandon	QUOTE STAGE	Hard copy of po#	

SCOPE OF WORK
Sale and installation of equipment

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
1	B62-370 1ea CCH0005MBACZA0000 REFRIGERATION CONDENSING UNIT OUTDOOR HEATCRAFT SCROLL 208-230V 1 PHASE	3,800.39	3,800.39
1	1ea B63-526 CEL0095AS6AMAB0200526 CEL0095AS6AMAB0200 AIR ECM 2 FAN 115V	2,947.44	2,947.44
1	B67-321 CCH0022LBBCZA0200 LOW TEMP CONDENSING UNIT	5,576.53	5,576.53
1	B63-537 CEL0080BS6EEAB0200 ELECTRIC ECM 2 FAN 230/1	3,338.00	3,338.00
1	Zone charge	2,270.00	2,270.000
20	Labor for 2 systems	1,2620.00	1,2620.00
1	Misc materials copper and drain materials	2,800.00	2,800.00

SUBTOTAL	33,352.009
SALES TAX	2,543.10
TOTAL	35,895.19

This is a quotation on the goods named, subject to the conditions noted below:

- Shipping charges are estimated and subject to change without notice.
- All work to be performed during normal business hours unless stated differently above.

To accept this quotation, sign here and return: _____

THANK YOU FOR YOUR BUSINESS!



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: G.1

SUBJECT: Resolution No. 41 25/26 Budget Adjustment Request

DEPARTMENT: Finance Department

DATE SUBMITTED: February 20, 2026

SUBMITTED BY: Kerin Salcedo, Accounting Officer

WHO WILL PRESENT THE ITEM: Jocelyn Holguin, Chief Financial Officer

Summary/Background: Reconciling Budget Adjustments Requests (based on Chapter 6, Article 6 NM Statute) needed for budget adjustments, increases, and decreases per attached.

Recommendation:

Approval Resolution No. 41 25/26 Final Budget Adjustment Requests for Fiscal Year 2025-2026

Attachments:

- Resolution No 41 25/26
- Schedule of Budget Adjustments, Supporting Documentation

Fiscal Impact (Finance): Yes

Changes in funding as presented on the Department of Finance and Administration Schedule of Budget Adjustments

Legal Review (City Attorney): N/A

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☐ Legal ☐ Other: Click here to enter text.

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. .

Continued To: . Referred To: .

☐ Approved ☐ Denied ☐ Other: .

File Name: CC Agendas 2-25-26



RESOLUTION NO. 41 25/26

A RESOLUTION REQUESTING FINAL BUDGET ADJUSTMENTS IN THE REVENUE AND EXPENDITURE BUDGET FOR FISCAL YEAR 2025-2026.

WHEREAS, the final budget for was approved by the City Commission of the City of Truth or Consequences, New Mexico, pursuant to Chapter 6, Article 76 NMSA 1978; and

WHEREAS, the City Commission in and for the City of Truth or Consequences, State of New Mexico needs to adjust the current approved budget for Fiscal Year 2025-2026; and

WHEREAS, said budget was adjusted on the basis of need and through cooperation with all user departments, elected officials and other department supervisors; and

WHEREAS, the official meeting for the review of said documents was duly advertised in compliance with the State Open Meetings act; and

WHEREAS, it is the majority opinion of this Board that the adjusted budget meets the requirements as currently determined.

NOW THEREFORE, BE IT RESOLVED that the City Commission of the City of Truth or Consequences, State of New Mexico hereby adopts the budget adjustment hereinabove described and attached and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

PASSED, ADOPTED and APPROVED this **25th day of February, 2026**.

Rolf Hechler, Mayor

ATTEST:

Angela A. Torres, City Clerk-Treasurer

Department of Finance and Administration
Local Government Division
Financial Management Bureau
SCHEDULE OF BUDGET ADJUSTMENTS

For Local Government Division use only:

ENTITY NAME: City of Truth or Consequences
FISCAL YEAR: 2025-26 2/25/2026
DFA Resolution Number: 41 Fully Executed Agreements
BAR NUMBER: 12

DOCUMENT NUMBER	FUND	ACCOUNT STRING	ACCOUNT NAME	REVENUE, EXPENDITURE, or TRANSFER (TO or FROM)	APPROVED BUDGET	ADJUSTMENT / INCREASE	ADJUSTED BUDGET	PURPOSE
1	299	299-7073-37371	AS-BFAS Grant 01-21-26	Revenue	\$ -	\$ 5,000	\$ 5,000	BFAS GRANT 01-21-26 TO 01-21-27 GRANT AWARD MUST BE DIRECTLY TIED TO SAVING THE LIVES OF CATS AND DOGS THAT WOULD BE AT-RISK IN SHELTERS
	299	299-7073-42720	AS-BFAS Grant 01-21-26 Employee Training	Expense	\$ -	\$ 3,700	\$ 3,700	BFAS GRANT 01-21-26 TO 01-21-27 GRANT AWARD MUST BE DIRECTLY TIED TO SAVING THE LIVES OF CATS AND DOGS THAT WOULD BE AT-RISK IN SHELTERS
	299	299-7073-44607	AS-BFAS Grant 01-21-26 Field Supplies	Expense	\$ -	\$ 1,300	\$ 1,300	BFAS GRANT 01-21-26 TO 01-21-27 GRANT AWARD MUST BE DIRECTLY TIED TO SAVING THE LIVES OF CATS AND DOGS THAT WOULD BE AT-RISK IN SHELTERS
							\$ -	
							\$ -	
							\$ -	
							\$ -	

Rolf Hechler, Mayor

(Date)



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: H1(a)

SUBJECT: Approval of Purchase Requisitions over \$60,000
DEPARTMENT: Finance
DATE SUBMITTED: February 19, 2026
SUBMITTED BY: Carlos Miyagishima, Chief Procurement Officer
WHO WILL PRESENT THE ITEM: Carlos Miyagishima, Chief Procurement Officer

Summary/Background:

Per Resolution No 46 20/27 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases Over \$60,000).

Recommendation:

Approval Recommended by Chief Financial Officer. Please see the attached purchase item list.

Attachments:

- Water Trust Board Grant Project Funds
- Wilson & Company Inc. Engineer & Architects
- Cantrell Dam Engineering Construction Administrative Services

Fiscal Impact (Finance): Yes

- \$876,484.76
- WFP-6621 Water Trust Board Grant project funds

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☐ Legal ☒ Other: Carlos Miyagishima, Chief Procurement Officer

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. [Click here to enter text.](#)

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC agendas 2-25-26

Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Destiny Mitchell
Commissioner



505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.gov

Ingo Hoeppepner
Commissioner

Chaz M. Glines
Commissioner

Gary Whitehead
City Manager

February 19, 2026

To City Mayor, Pro-Tern and Commissioners,

RE: CANTRELL DAM ENG CONSTRUCTION ADMIN SERVICES

The Procurement Department along with Street Department issued a Wilson on-call contract #2024-09-001 RFP NO. 23-24-005 for the engineering construction administration and oversight services of the Cantrell Dam.

I will defer to Jocelyn Holguin the Chief Financial Officer. Thank you.

Please, review the attached documents and approve the requested procurement. Thank you.

\$876,484.76

WATER TRUST BOARD GRANT PROJECT Funds: 370-7070

Regards,

Carlos Miyagishima
Chief Procurement Officer

Commission Approved: Yes ☐ No ☐ Tabled ☐

Date of Approval/ Denied/Tabled: _____

Notes: _____ Requisition #95973

PROCUREMENTS \$60,000 AND OVER

2025-26 Fiscal Year

COMMISSION MEETING 02/25/2026

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
A.	Wilson & Company Inc. Engineer & Architects	Contrell Dam Breach and Flood control improvements Project; Wilson on call contract #2024-09-001 RFP no. 23-24-005	Carlos Miyagishima	Procurement	\$876,484.76	WFP-6621 Water Trust Board Grant project funds
TOTAL					\$ 876,484.76	

ATTEST:

Angela Torres, Clerk-TreasurerDate

Rolf Hechler, MajorDate

PLEASE NOTE: This purchase request is for the City Fire Department utilizing fire funds.



REQUISITION

Requisition #: 95973

Date: 02/19/2026

Vendor #: 7982

ISSUED TO: WILSON & COMPANY INC ENGINEER & ARCHI
4401 MASTHEAD ST NE SUITE 150
ALBUQUERQUE, NM 87109-

SHIP TO: COMMUNITY DEVELOPMENT
401 McAdoo St.
Truth or Consequences, NM 87901

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 ENGINEERING CONSTRUCTION ADMIN AND OVERSIC		0.00 370-7070-80847	800,484.76
2	0 MATCH REQUIREMENT		0.00 370-7070-80847	76,000.00

PO Description: CANTRELL DAM ENG CONSTRUCTION ADMIN SERVICES

Detailed Description:

FOR COMMISSION APPROVAL 2-25-2026

ENGINEERING CONSTRUCTION ADMINISTRATION AND OVERSIGHT SERVICES FOR THE CANTRELL DAM BREACH AND FLOOD CONTROL IMPROVEMENTS PROJECT

WILSON ON CALL CONTRACT#2024-09-001 RFP NO. 23-24-005

WPF-6621 WATER TRUST BOARD GRANT PROJECT FUNDS

1. Project Start-Up and Bidding Support

Authorized By: _____

SUBTOTAL:	876,484.76
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	876,484.76

February 16, 2025

Ms. Traci Alvarez
Assistant City Manager
505 Sims Street
Truth or Consequences, NM 87901

Re: Fee Proposal for the Cantrell Dam Breach and Flood Control Improvements Project

Dear Ms. Alvarez,

Thank you for considering Wilson & Company to assist the City of Truth or Consequences with construction administration for the Cantrell Dam Breach and Flood Control Improvements Project. Attached for your review is our fee proposal for the construction administration services.

The proposed scope of services and corresponding fee are based on a 16-month construction period to achieve Substantial Completion, followed by a one-month period to achieve Final Completion. Throughout this duration, our team will provide comprehensive construction administration, full-time field observation through Substantial Completion, and part-time observation through Final Completion.

Our approach is structured to protect the City's interests, ensure compliance with State and Federal funding requirements, safeguard public investment, and deliver a high-quality project that meets all contractual and regulatory obligations. Services will include project management, field engineering support, materials testing (field and laboratory), and full administrative support, as described below.

Construction Administration Support:

1. Project Start-up

- a) Project file set-up
- b) Secure FTP shared-site setup for transparent document exchange
- c) Setup Minimum Testing requirements
- d) Setup Source Book to track quantities, pay items, certification and compliance documentation

2. Administration of Construction Bidding and Pre-Construction Activities

We will manage the bidding and contract execution process to promote fairness, transparency, and competitive pricing while protecting the City's interests.

- a) Preparation and issuance of the Invitation for Bid (IFB)
- b) Hosting of the bidding plan room and development of a qualified bidders list
- c) Conducting the pre-bid conference
- d) Issuance of formal addenda in response to contractor inquiries
- e) Hosting and documenting the public bid opening
- f) Preparation of a certified Bid Evaluation and Award Recommendation package
- g) Presentation of award recommendation to the City
- h) Issuance of Notice of Award and oversight of contract execution
- i) Issuance of Notice to Proceed
- j) Distribution of fully executed Project Manual
- k) Scheduling and facilitation of the Pre-Construction Meeting
- l) Review and evaluation of subcontractor packages, shop drawings, and required pre-construction submittals

3. Project Observation and Project Bulletin Board Inspection

Full-time, TTCP-certified field observation will be provided throughout the 16-month construction period (40 hours per week, including travel time), with additional support as necessary to maintain documentation and process payments to the contractor. Services include:

- a) Monthly progress meetings with agendas and documented minutes
- b) Comprehensive review and approval of project documentation (certifications, payrolls, subcontracts, testing reports, traffic control logs, quality control plans)
- c) Active tracking of contract milestones, deliverables, time, and budget
- d) Review and response to RFIs with construction engineering support
- e) Evaluation and recommendation of Change Orders with full documentation
- f) Processing and verification of contractor pay applications
- g) Daily coordination among field staff, contractor, and testing laboratory
- h) Review of construction schedule and traffic control implementation
- i) Public relations support and coordination as needed
- j) Enforcement of plan and specification conformance
- k) EEO and labor compliance oversight
- l) Issuance of formal construction status notifications (start, suspension, resumption, Substantial Completion, Final Completion)

Our management structure provides the City with real-time awareness of project status while reducing administrative burden on municipal staff.

4. Project Management

Our project management services are designed to maintain schedule control, budget discipline, and regulatory compliance while ensuring clear communication with City staff and stakeholders. Services include:

- a) Conduct monthly progress meetings, including preparation and distribution of meeting agenda and minutes.
- b) Review and approve all project documentation including source books, certificates of compliance, payrolls, subcontracts, traffic control logs, quality control plan(s) and testing report(s).
- c) Contract and document administration - Track contract requirements, milestones, and deliverables.
- d) Perform review of RFIs and issue correspondence and formal responses with the assistance of Construction Engineering support.
- e) Oversee review and processing of Change Orders and action recommendation(s) with the assistance of Construction Engineering support.
- f) Process applications for payment.
- g) Daily Project Management: coordination with onsite observer, contractor, material testing and testing laboratory; review daily construction reports, construction schedule, and traffic control plan(s).
- h) Monitor contract time and budget.
- i) Support maintaining public relations.
- j) Enforce project conformance of plans and specifications.
- k) EEO and Labor compliance oversight.
- l) Prepare and issue as needed Notice of Construction Status including project start, suspensions, partial suspensions, resume, substantial completion, and final completion.

5. Construction Engineering Support

Construction Engineering support will be provided to ensure technical conformance and preservation of design intent. Services include:

- a) Technical review of shop drawings and submittals for compliance with Contract Documents
- b) Preparation of formal responses to RFIs
- c) Issuance of design clarifications and minor revisions, as required
- d) Technical analysis and documentation supporting Change Orders
- e) Site visits to address field conditions and constructability issues
- f) Participation in progress meetings, as necessary

6. Project Closeout

Closeout services will be performed to ensure contractual completion, documentation completeness, and funding compliance. Services include:

- a) Conducting preliminary and final inspections
- b) Preparation and verification of punch list items
- c) Continuation of full-time observation through Substantial Completion
- d) Part-time observation during the Final Completion phase (approximately 8 hours per week for 4 weeks, inclusive of travel time)
- e) Preparation of final closeout documentation and certifications
- f) Final reimbursement review and funding compliance verification
- g) Preparation of Record (As-Built) Drawings
- h) Compilation and delivery of complete hardcopy and electronic project records to the City

7. Quality Assurance/ Independent Assurance Testing

All testing will be completed in accordance with New Mexico Department of Transportation Minimum Testing Requirements and Frequencies and applicable project specifications.

Deliverables: Provide to the City of Truth or Consequences all Project correspondence and Project documentation

Our fee proposal for this Projects Construction Administration Support is \$811,560.00, excluding NMGT, to be completed on a lump sum basis. This amount includes all identified project expenses. Please see the attached fee breakdown for further definition of Task man-hours.

We can begin work immediately upon receiving a formal Notice to Proceed. We thank you for giving us this opportunity to submit this Fee Proposal. Please let me know if you have any additional questions regarding our fee proposal. I may be contacted at 505-348-4053 or by email at caperea@wilsonco.com.

Sincerely,
WILSON & COMPANY



Chris Perea, PE
Construction Manager
505-348-4053

CITY APPROVAL SIGNATURE:

Date: _____

Name

Title

cc: Edward Cordova

Attachments: Wilson & Company Fee Proposal

Disclaimer: "Notwithstanding its periodic observation of the work, Wilson & Company will not be liable or responsible for the Contractor's failure to perform the work in strict accordance with the requirements of the Construction Documents (e.g., plans, specifications, approved submittals, etc.). Wilson & Company has no control over, charge of, and will not be responsible for, the acts or omissions of the Contractor or its subcontractors."

**Construction Management Proposal
Cantrell Dam Breach and Flood Control Improvements**

Prepared for City of Truth or Consequences

Construction Oversight & Contract Administration

Engineering Technical Support

Description/Personnel	Principal	CA Project Manager	Sr. Observer	Office Mgr.	Civil Engineering Project Manager	CADD	Constr. Engr	
Rate \$\$/hr	\$299.00	\$236.00	\$156.00	\$138.00	\$236.00	\$126.34	\$174.00	
Project Start-Up								
File Set Up		16	16	40				\$11,792.00
Minimum Testing Requirement Setup, Source Book Setup		20	24					\$8,464.00
Bid Documents, Bidding, and Pre Construction Meeting	7	14	5	47	7		14	\$16,751.00
SUBTOTAL	7	50	45	87	7		14	\$37,007.00
Project Observation								
Project Observation, Project Bulletin Board Checklist, Source Book Maintain, Traffic Control Oversight, SWPPP Oversight, EEO Interviews, CUF review(s), Field Site Reviews: * Main Observer - Regular Time at 8 hrs Day for 487 Calendar days		32	2783					\$441,700.00
SUBTOTAL		32	2783					\$441,700.00
Contract Management								
Contract Management (Monthly Progress Meetings, RFI, Submittals, Change Order Review/Approval, Testing Credits Review/Certification): * 20 hrs mo for C.A PM oversight, which includes travel to in-person Monthly Progress Meeting on an as needed basis * 16 hrs mo for Engineering Support including travel to project site on an as needed basis		320		80	32	40	256	\$143,709.60
Pay Applications, Project Documentation Processing and filing * 10 hrs Month for 16 Months		32	32	96				\$25,792.00
Monthly Progress Reporting * 6 hrs mo to prepare monthly progress status update							96	
SUBTOTAL		352	32	176	32	40	352	\$186,205.60
Project EEO and Audits								
Documentation Review, File Management, LCP Tracker and B2GNOW softwares		32		80				\$18,592.00
EEO Audits, Contract Administration, Wage Rate Interviews, CUF's * 6 hrs Month for 16 Months		16		80				\$14,816.00
SUBTOTAL		48		160				\$33,408.00
Project Close-Out								
Substantial Completion walk through with City and Contractor, Observation (Closeout/Punch List): * Main Observer - Part Time at 8 hrs wk for 4 wks	6	8	32	8			8	\$11,170.00
Punch List Final Review/Certification		8	4	4				\$3,064.00
Close Out Package - including but not limited to Proof of Completion of Work, required documentation in accordance with Grant Agreement	1	16					8	\$5,467.00
Final Reimbursement Paperwork/Certifications/Final Adjusting Change Order	1	16		40				\$9,595.00
Address comments from City and submit final documents	1	4		8				\$2,347.00
Asbuilts Staff review and redlines		2	8				8	\$3,112.00
Asbuilts electronic format		2	4			60	8	\$10,068.40
SUBTOTAL	9	56	48	60		60	32	\$44,823.40
Quality Assurance Testing								
Concrete Sampling and Field Testing, Density Testing (Sub-base, Backfill and Base Course)	Included in Sr. Observer/ Observer Hours							
Total Man Hours	16	538	2908	483	39	100	398	4,482
Unit Cost	\$4,784.00	\$126,968.00	\$453,648.00	\$66,654.00	\$9,204.00	\$12,634.00	\$69,252.00	
Total Labor								\$743,144.00
Quality Assurance - Material Laboratory Testing (Lump Sum)								
Concrete Testing, Base Course Testing, Subgrade/Backfill Soil Testing: all per NMDOT MTR								\$36,000.00
Mileage: 16 Months @ \$2,650/Month								\$42,400.00
SUBTOTAL								\$78,400.00
Total Expenses								\$78,400.00
CM Project Total/Pre-GRT								\$821,544.00
City of Truth or Consequences GRT @ 6.6875%								\$54,940.76
CM Project total w/GRT								\$876,484.76
Proposed Project CM Cost w/ NMGR								\$876,484.76

* Punch List Period estimated as 30 Calendar Days.

\$8,090,000

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

dated

January 16, 2026

by and between the

**NEW MEXICO FINANCE AUTHORITY
as Lender/Grantor,**

and

**CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO,
as Borrower/Grantee.**

**WATER PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the "Agreement" or "Loan/Grant Agreement") dated January 16, 2026, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the "NMFA" or "Lender/Grantor"), and the **CITY OF TRUTH OR CONSEQUENCES** in SIERRA COUNTY, NEW MEXICO (the "Borrower/Grantee").

WITNESSETH:

WHEREAS, the NMFA is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended (the "NMFA Act"); and

WHEREAS, the NMFA Act provides that the NMFA may make loans and grants from the Water Project Fund to qualifying entities for Qualifying Water Projects; and

WHEREAS, the Borrower/Grantee is authorized to impose by ordinance a Municipal Gross Receipts Tax pursuant to Section 7-19D-9, NMSA 1978; and

WHEREAS, the Borrower/Grantee has by the Tax Ordinance imposed what was known as the one-eighth of one percent (0.125%) increment of Municipal Infrastructure Gross Receipts Tax on the gross receipts of all persons engaging in business within the Borrower/Grantee which provides for the Pledged Revenues; and

WHEREAS, the Municipal Infrastructure Gross Receipts Tax imposed by the Tax Ordinance is no longer identifiable as the one-eighth of one percent (0.125%) increment of Municipal Infrastructure Gross Receipts Tax, and instead comprises one-eighth of one percent (0.125%) of the maximum rate of Municipal Gross Receipts Tax that may be imposed under Section 7-19D-9, NMSA 1978, as amended, of two and one-half percent (2.50%), which is pledged to the Loan;

WHEREAS, pursuant to the Act, the Water Trust Board has established the Board Rules governing the terms and conditions of loans and grants made from the Water Project Fund, as set out in Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC, pursuant to the Board Rules for Qualifying Water Projects; and

WHEREAS, pursuant to the Board Rules, except as provided in the Policies, a qualifying entity is expected to receive some portion of its funding as a loan in order to maximize the potential for the return of funds to the Water Project Fund, thereby increasing the limited financial resources expected to be available in the Water Project Fund; and

WHEREAS, the Borrower/Grantee is a legally and regularly created, established, duly organized and existing municipality under and pursuant to the laws of the State and more specifically, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended, is a qualifying entity under the Water Project Finance Act and is qualified for financial assistance as determined by the NMFA and approved by the Water Trust Board pursuant to the Board Rules, the Policies and the Act; and

WHEREAS, the Borrower/Grantee has determined that it is in the best interests of the Borrower/Grantee and the constituent public it serves that the Borrower/Grantee enter into this Agreement with the Lender/Grantor to borrow \$809,000 from the Lender/Grantor and to accept a grant in the amount of \$7,281,000 from the Lender/Grantor to finance the costs of the Project, this Project being more particularly described in the Term Sheet; and

WHEREAS, the Borrower/Grantee submitted an Application dated September 4, 2024, and January 21, 2025, for the Project; and

WHEREAS, pursuant to the Board Rules the Water Trust Board recommended the Project for funding as a Qualifying Water Project to the Legislature; and

WHEREAS, Chapter 35, Laws 2025, being House Bill 206 of the 2025 Regular New Mexico Legislative Session, authorized the funding of the Project from the Water Project Fund; and

WHEREAS, the Water Trust Board has recommended that the NMFA enter into and administer this Agreement in order to finance the Project; and

WHEREAS, the NMFA approved on May 22, 2025, that the Borrower/Grantee receive financial assistance in the form of the Loan/Grant; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan Payments and Administrative Fee, with a lien on the Pledged Revenues subordinate to all other liens thereon present and future, except that the lien on the Pledged Revenues of any future loans from the Lender/Grantor to the Borrower/Grantee pursuant to the Water Project Finance Act or the Colonias Infrastructure Act, secured by the Pledged Revenues shall be on a parity with this Agreement; and

WHEREAS, the plans and specifications for the Project have been approved by the NMFA (or by the New Mexico Environment Department or other appropriate agency or entity on behalf of the NMFA, pursuant to an agreement between such agency or entity and the NMFA), prior to the commencement of construction, and the plans and specifications for the Project incorporate available technologies and operational design for water use efficiency; and

WHEREAS, the execution and performance of this Agreement have been authorized, approved and directed by all necessary and appropriate action of the Water Trust Board and the NMFA, and their respective officers.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Agreement

including the foregoing recitals, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined).

“Act” means the general laws of the State, particularly the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, and enactments of the Governing Body relating to this Agreement, including the Resolution, all as amended and supplemented.

“Additional Funding Amount” means the amount to be provided by the Borrower/Grantee which includes the total value of the Soft Match or Hard Match (each as defined in Section 4.2 of the Policies) which, in combination with the Loan/Grant Amount and other moneys available to the Borrower/Grantee, is sufficient to complete the Project and to provide matching funds required to complete the Project. The Additional Funding Amount is \$809,000.

“Administrative Fee” or “Administrative Fee Component” means an amount equal to one-quarter of one percent (0.25%) per annum of the unpaid principal balance of the Loan Amount, taking into account both payments made by the Borrower/Grantee and hardship waivers of payments granted to the Borrower/Grantee pursuant to Section 5.1(a)(iii) of this Agreement.

“Agreement Term” means the term of this Agreement as provided under Article III of this Agreement.

“Application” means the New Mexico Water Trust Board Application dated September 4, 2024 and the New Mexico Water Trust Board Readiness Application dated January 21, 2025 of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Mayor, Mayor Pro Tem and City Clerk-Treasurer thereof; with respect to the NMFA, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the NMFA designated in writing by an Authorized Officer.

“Board Rules” means Review and Eligibility of Proposed Water Projects, New Mexico Water Trust Board, 19.25.10 NMAC.

“Closing Date” means the date of execution and delivery of this Agreement by the Borrower/Grantee and the NMFA.

“Colonias Infrastructure Act” means NMSA 1978, §§ 6-30-1 through 6-30-8, as amended.

“Conditions” means the conditions to be satisfied prior to the submission of a request for payment or the disbursement of the Loan/Grant Amount, or any portion thereof, from the Water Project Fund, or which otherwise apply to the performance of this Agreement, including those set forth in the Term Sheet.

“Department of Finance and Administration” or “DFA” means the department of finance, and administration of the State.

"Eligible Items" means eligible Project costs for which grants and loans may be made pursuant to NMSA 1978, § 72-4A-7(C), as amended, of the Act, the Board Rules and applicable Policies, and includes, without limitation, Eligible Legal Costs.

"Eligible Legal Costs" means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project, in an amount not exceeding ten (10) percent of the Loan/Grant Amount, but does not include adjudication services.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Agreement.

"Final Debt Service Schedule" means the schedule of Loan Payments due on this Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

"Final Requisition" means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 5.3 of this Agreement.

"Fiscal Year" means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority of the Borrower/Grantee may hereafter establish for the Borrower/Grantee as its fiscal year.

"Force Majeure" means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

"Generally Accepted Accounting Principles" means the officially established accounting principles applicable to the Borrower/Grantee, consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board, or other principle-setting body acceptable to the Lender/Grantor, establishing accounting principles applicable to the Borrower/Grantee.

"Governing Body" means the duly organized City Commission of the Borrower/Grantee, or any successor governing body of the Borrower/Grantee.

"Grant" or "Grant Amount" means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall not equal more than \$7,281,000.

"Hardship Waiver" means a determination by the NMFA pursuant to Section 5.1(a)(iii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to this entire Agreement and not solely to the particular section or paragraph of this Agreement in which such word is used.

"Interest Component" means the portion of each Loan Payment paid as interest on this Agreement, if any, as shown on Exhibit "B" hereto.

"Interim Debt Service Schedule" means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan Amount within twenty four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit "B".

"Interim Period" means the period no greater than twenty four (24) months, unless a longer period is approved by the NMFA as provided in Section 5.3 of this Agreement, beginning on the Closing Date, during which the NMFA will disburse moneys to the Borrower/Grantee to pay costs of the Project.

"Lender/Grantor" means the New Mexico Finance Authority.

"Loan" or "Loan Amount" means the amount provided to the Borrower/Grantee as a loan pursuant to this Agreement for the purpose of funding the Project and shall not equal more than \$809,000.

"Loan/Grant" or "Loan/Grant Amount" means the combined amount partially provided to the Borrower/Grantee as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than \$8,090,000.

"Loan Payments" means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit "B" hereto.

"NMAC" means the New Mexico Administrative Code.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

"Parity Obligations" means this Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Agreement, as shown on the Term Sheet.

"Pledged Revenues" means the one-eighth of one percent (0.125%) increment of what was known as the Municipal Infrastructure Gross Receipts Tax imposed on gross receipts of all persons engaging in business within the Governmental Unit pursuant to the Tax Ordinance and pledged to the payment of the Loan Payments and the Administrative Fee pursuant to the Resolution and this Agreement and described in the Term Sheet, which tax is enforceable under Section 7-19D-9, NMSA 1978, as amended.

"Policies" means the Water Trust Board Water Project Fund Project Management Policies approved by the Water Trust Board and the NMFA, as amended and supplemented from time to time.

"Principal Component" means the portion of each Loan Payment paid as principal on this Agreement as shown on Exhibit "B" hereto.

"Project" means the project(s) described on the Term Sheet.

"Project Account" means the book account established by the NMFA in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, as shown in the Term Sheet, which account shall be kept separate and apart from all other accounts of the NMFA.

"Qualifying Water Project" means a water project for (i) storage, conveyance or delivery of water to end-users; (ii) implementation of the federal Endangered Species Act of 1973 collaborative programs; (iii) wastewater conveyance and treatment; (iv) restoration and management of watersheds; (v) flood prevention; or, (vi) water conservation or recycling, treatment or reuse of water as provided by law; and which has been approved by the state legislature pursuant to NMSA 1978, § 72-4A-9(B), as amended.

"Resolution" means the Borrower/Grantee Resolution No. 26 25/26, adopted by the Governing Body on December 3, 2025 authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments and the Administrative Fee as shown on the Term Sheet.

"Senior Obligations" means any outstanding obligations with a superior lien on the Pledged Revenues as defined in the Term Sheet, or any such obligations hereafter issued and meeting the requirements of the Agreement applicable to the issuance of Senior Obligations.

"State" means the State of New Mexico.

"State Board of Finance" means the State board of finance created pursuant to NMSA 1978, §§ 6-1-1 through 6-1-13, as amended.

"Tax Ordinance" means Borrower/Grantee's Ordinance No. 389 passed and approved by the Borrower/Grantee pursuant to Section 7-19D-9, NMSA 1978, as amended by Ordinance No. 472, on March 26, 1992, which imposes the one-eighth of one percent (0.125%) increment of Municipal Infrastructure Gross Receipts Tax on the gross receipts of persons engaging in business within the Borrower/Grantee, effective July 1, 1992. Pursuant to Laws 2019, Chapter 274, § 16, the Municipal Infrastructure Gross Receipts Tax imposed by Ordinance No. 389, as amended by Ordinance No. 472, is no longer identifiable as the one-eighth of one percent (0.125%) increment of Municipal Infrastructure Gross Receipts Tax, and instead comprises one-eighth of one percent (0.125%) of the maximum rate of Municipal Gross Receipts Tax that may be imposed under Section 7-19D-9, NMSA 1978, as amended, of two and one-half percent (2.50%) of which is pledged to the Loan.

"Term Sheet" means Exhibit "A" attached to this Agreement.

"Useful Life" means the structural and material design life of the Project including planning and design features, as required by the Act and the Board Rules.

"Water Project Fund" means the fund of the same name created pursuant to the Act and held and administered by the NMFA. .

"Water Trust Board" or "WTB" means the water trust board created and established pursuant to the Act.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants for the benefit of the NMFA as follows:

(a) Binding Nature of Covenants; Enforceability. All representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee contained in this Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Borrower/Grantee and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Borrower/Grantee by the provisions of this Agreement and the Resolution shall be exercised or performed by the Borrower/Grantee or by such members, officers, or officials of the Borrower/Grantee as may be required by law to exercise such powers and to perform such duties.

(b) Authorization of Agreement. The Borrower/Grantee is a qualifying entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement, and this Agreement and the other documents related to the transaction to which the Borrower/Grantee is a party constitute legal, valid and binding special obligations of the Borrower/Grantee enforceable against the Borrower/Grantee in accordance with their respective terms.

(c) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the distribution of the Loan/Grant Amount shall be deemed to be a distribution to the Borrower/Grantee of proceeds representing the Loan Amount and the Grant Amount on a *pro rata* basis from the maximum Loan Amount and Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project, and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant

Amount, together with the Additional Funding Amount and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety.

(d) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Amount and Administrative Fee as provided in this Agreement, except when a Hardship Waiver is obtained pursuant to Section 5(a)(iii) of this Agreement. The Loan and Administrative Fee shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee, in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(e) Scope of Project; Completion of Project; Compliance with Laws. The Project is for flood prevention. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. The Project is more particularly described in the Term Sheet. The Project will be completed with all practical dispatch and will be completed, operated and maintained so as to comply with all applicable federal, state and local laws, ordinances, resolutions and regulations and all current and future orders of all courts having jurisdiction over the Borrower/Grantee relating to the acquisition, operation, maintenance and completion of the Project and to the use of the Loan/Grant proceeds.

(f) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee and the public it serves.

(g) Lien. The Loan Payments constitute an irrevocable lien on the distribution on the Pledged Revenues, the priority of which is consistent with that shown on the Term Sheet.

(h) Agreement Term Not Less than Useful Life. The Agreement Term is not less than the Useful Life of the Project, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

(i) Amount of Agreement. The sum of the Grant Amount, the Loan Amount, and the Additional Funding Amount (and as set forth on the Term Sheet) does not exceed the cost of the Project.

(j) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement and the other documents related to the transaction, nor the fulfillment of or compliance with the terms and conditions in this Agreement and the other documents related to the transaction, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Borrower/Grantee is a party or by which the Borrower/Grantee is bound or any laws, ordinances, governmental rules or regulations or court or

other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(k) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Agreement, including the Resolution shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest has been repaid, or provision made for payment thereof, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee shall not impair the rights of the NMFA or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(l) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(m) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement and the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(n) Pledged Revenues Not Budgeted; Pledged Tax Revenues Covenants. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or anticipated expenses of the Borrower/Grantee. Pursuant to NMSA 1978, § 7-1-6.4, as amended, and NMSA 1978, § 7-1-6.15, as amended, the State collects gross receipts taxes from business locations within the Borrower/Grantee, on land owned by the State within the exterior boundaries of the Borrower/Grantee, and outside the exterior boundaries of the Borrower/Grantee on land owned by the Borrower/Grantee, and distributes each month to the Borrower/Grantee the revenues of the Tax Ordinance which distributions the Borrower/Grantee pledges and covenants for the performance of its obligations under this Agreement.

(o) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed—from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal Year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(p) Right to Inspect. The NMFA shall have the right to inspect at all reasonable times all records, accounts and data relating to the Project and to inspect the Project and all properties comprising the Project, and the Borrower/Grantee shall supply such records, accounts, and data as are requested by the NMFA, within thirty (30) days of receipt of such request, written or oral.

(q) Financial Capability; Budgeting of Pledged Revenues. The Borrower/Grantee meets and will meet during the Agreement Term the requirements of financial capability set by the Water Trust Board and the NMFA. The Pledged Revenues will be sufficient to make the Loan Payments, as and when due. The Borrower/Grantee will adequately budget for the Loan Payments and other amounts payable by the Borrower/Grantee under this Agreement.

(r) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another political subdivision, State agency, or other entity by operation of law succeeds to the liabilities, rights and duties of the Borrower/Grantee under this Agreement without adversely affecting to any substantial degree the privileges and rights of the Lender/Grantor.

(s) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The Borrower/Grantee shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project, or any part of the Project so long as this Agreement is outstanding; provided, however, that if the Project is a joint project of the Borrower/Grantee and other qualifying entities (as defined by the Act), the Borrower/Grantee and the other qualifying entities may, with the express written approval of the NMFA and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the term of the Agreement. Any such agreement shall provide that the Lender/Grantor, or either of them, shall have the power to enforce the terms of this Agreement, without qualification, as to each and every qualifying entity (as defined by the Act) other than the Borrower/Grantee, owning or operating any portion of the Project during the term of the Agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(t) Title and Rights of Way. As required by NMSA 1978, § 72-4A-7(A)(3) of the Act, as amended, and the Board Rules, the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that the Borrower/Grantee has proper title to, easements, rights of way or use permits on the real property upon or through which the Project is being constructed, located, completed or extended, and if any portion of the Project will be conducted and completed on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, such other qualifying entity has title to such real property, and the Borrower/Grantee shall provide written assurance signed by an attorney or provide a title insurance policy ensuring that such other qualifying entity has proper title to such real property.

(u) Additional Funding Amount. Together with the Loan/Grant Amount and other amounts available to the Borrower/Grantee, the Additional Funding Amount is now available to the Borrower/Grantee, and in combination with the Loan/Grant Amount, will be sufficient to

complete the Project. If any other additional expenses are incurred, the Borrower/Grantee shall be responsible for payment of such expenses.

(v) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended. Upon request by the NMFA, the Borrower/Grantee shall provide the NMFA a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(w) Reserved.

(x) Records. So long as the Agreement remains outstanding, proper books of record and account will be kept by the Borrower/Grantee in accordance with Generally Accepted Accounting Principles, separate from all other records and accounts, showing complete and correct entries of all transactions relating to the Project.

(y) Competent Management. The Borrower/Grantee shall employ or contract for experienced and competent personnel to manage the Project.

(z) Readiness Requirements. The Borrower/Grantee has met the requirements of Executive Order 2013-006 and it has met or will meet prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the NMFA and the Water Trust Board.

(aa) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

(bb) NMFA Written Consent to Additional Loans. The Borrower/Grantee shall obtain the written consent of the NMFA prior to the issuance of additional Senior Obligations or Parity Obligations unless such Senior or Parity Obligation has been issued by the NMFA.

Section 2.2 Representations and Warranties of the NMFA. The NMFA represents as follows:

(a) Authorization of Agreement. The NMFA is a public body politic and corporate separate and apart from the State, constituting a governmental instrumentality, and has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Agreement and, by proper action, has duly authorized the execution and delivery of this Agreement.

(b) Legal, Valid and Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the NMFA enforceable in accordance with its terms.

ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate at the end of the Useful Life of the Project, as required by NMSA 1978, § 72-4A-7, as amended, of the Act.

ARTICLE IV
LOAN/GRANT AGREEMENT CONDITIONS

Section 4.1 Conditions Precedent to Closing of Loan/Grant. Prior to the Closing Date, the following Conditions and readiness to proceed items shall be satisfied:

(a) The NMFA, on behalf of the Water Trust Board, shall have determined that the Borrower/Grantee has met the Conditions and readiness to proceed requirements established for the Loan/Grant by the NMFA and the Water Trust Board including any Conditions set out in the Term Sheet; and

(b) The Borrower/Grantee shall have provided written assurance addressed to the NMFA and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to or easements, rights of way, or permits on the real property upon or through which the Project is being constructed, located, completed or extended; and

(c) If any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee shall have provided written assurance addressed to the NMFA and signed by an attorney (or shall have provided a title insurance policy) that such other qualifying entity has proper title to such real property; and

(d) Prior to the disbursement of any portion of the Loan/Grant Amount for purposes of construction of the Project, the plans and specifications funded with the proceeds of this Agreement will be approved by the NMFA or on behalf of the NMFA as required by NMSA 1978, § 72-4A-7(B), as amended, by the New Mexico Environment Department and the Office of the State of Engineer, and the Borrower/Grantee shall have provided written evidence of such approval to the NMFA; and

(e) Except as otherwise expressly provided in the Conditions, the Borrower/Grantee shall have certified to the Lender/Grantor that the Additional Funding Amount is available for the Project, and, in addition, shall have provided additional evidence reasonably acceptable to the Lender/Grantor of the availability of the Additional Funding Amount; and

(f) The Borrower/Grantee shall be in compliance with the provisions of this Agreement.

(g) Notwithstanding anything in this Agreement to the contrary, the NMFA shall not be obligated to execute the Agreement and may not make the Loan/Grant until the Borrower/Grantee has provided to the NMFA the documents listed on Exhibit "F" attached hereto, all of which must be in form and content acceptable to the NMFA.

Section 4.2 Determination of Eligibility Is Condition Precedent to Disbursement. No request for payment shall be made, nor shall any disbursement be made from the Water Project Fund, for any requisition of any portion of the Loan/Grant Amount, except upon a determination by the NMFA in its sole and absolute discretion that such disbursement is for payment of Eligible Items, and that the request for payment or disbursement does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies

governing the Water Project Fund. The NMFA, as a condition precedent to submitting any request for payment to the State Board of Finance or making any requested disbursement from the Water Project Fund, may require submittal of such documentation as the NMFA deems necessary, in its sole and absolute discretion, for a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

ARTICLE V
LOAN TO THE BORROWER/GRANTEE; GRANT TO THE
BORROWER/GRANTEE; APPLICATION OF MONEYS

Section 5.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The Lender/Grantor hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the Lender/Grantor, without interest, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "B" of this Agreement.

(i) Subordinate Nature of Loan Amount and Administrative Fee Obligation. The obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be subordinate to all other indebtedness secured by the Pledged Revenues existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues; except, however, that the obligation of the Borrower/Grantee to make the Loan Payments and to pay the Administrative Fee shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act.

(ii) Administrative Fee. The Borrower/Grantee shall, on an annual basis beginning on the first payment date following the completion of the Project or exhaustion of all Loan/Grant Amounts as set out in Section 5.3 hereof, pay to the Lender/Grantor the Administrative Fee, taking into account both payments made by the Borrower/Grantee and Hardship Waivers granted to the Borrower/Grantee as provided by this Agreement. Any such Administrative Fee payment shall be due irrespective of whether or not a Hardship Waiver is granted to the Borrower/Grantee for the principal payment otherwise due on June 1 of the applicable year or any other year.

(iii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, no later than April 1 of each such year, the Borrower/Grantee may apply in writing to the NMFA for a determination of whether the annual principal payment on the Loan Amount otherwise due on the upcoming June 1 of such year should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves. The Borrower/Grantee shall submit such application to the NMFA for determination with sufficient documentation of the existence of such undue hardship as is reasonably required by the NMFA to make a determination, and the Borrower/Grantee shall promptly respond to additional requests for information from the NMFA. Such application for Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. An "undue hardship" exists if the NMFA

determines that the Borrower/Grantee is facing unforeseen events or an emergency that has caused the Borrower/Grantee to be unable to pay on a timely basis the annual principal payment on the Loan Amount. The NMFA may consult the Department of Finance and Administration in determining whether to grant the Hardship Waiver. The NMFA shall make a determination no later than May 15 of the applicable year, and the NMFA shall promptly communicate to the Borrower/Grantee in writing the results of its determination. Upon receipt of written notice of the determination, either the principal payment otherwise due on June 1 of such year shall be forgiven (in the event of a determination of undue hardship) or the principal payment shall remain outstanding and due and payable on June 1 (in the event no undue hardship is determined to exist).

(b) Grant and Acceptance. The Lender/Grantor hereby grants to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the Lender/Grantor an amount equal to the Grant Amount.

(c) Project Account. The NMFA shall establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the NMFA.

(d) Constitutional and Statutory Debt Limitations. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Water Trust Board, the NMFA, the State or the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

Section 5.2 Application of Loan/Grant Amount. Following the determination by the NMFA in its sole and absolute discretion that the Conditions to the disbursement of the Loan/Grant Amount have been satisfied, the NMFA shall make an entry in its accounts, and in particular in the Project Account, reflecting the proceeds of the Loan/Grant Amount made available for disbursement from the Water Project Fund to the Borrower/Grantee at its request, and as needed by it to acquire and complete the Project, as provided in Section 7.2 of this Agreement.

Section 5.3 Final Requisition. The Final Requisition shall be submitted by the Borrower/Grantee within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the NMFA, based on the Borrower/Grantee's demonstration, to the reasonable satisfaction of the Authorized Officer of the NMFA, that unanticipated circumstances beyond the control of the Borrower/Grantee resulted in delaying the acquisition and completion of the Project, and submission of the Borrower/Grantee's Final Requisition.

Section 5.4 Investment of Monies. Money in the Water Project Fund, representing proceeds of this Agreement, held and administered by the NMFA, may be invested by the NMFA for the credit of the Water Project Fund.

ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The NMFA hereby lends to the Borrower/Grantee and

the Borrower/Grantee hereby borrows from the NMFA an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Parity Obligations and Senior Obligations, the Borrower/Grantee does hereby grant a lien on and a security interest in and does hereby convey, assign and pledge unto the NMFA and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Payments, and to pay the Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all other pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (except only that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the Lender/Grantor pursuant to the Act or the Colonias Infrastructure Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments, Administrative Fees and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments and Administrative Fees at the time and in the manner contemplated by this Agreement, or shall provide as permitted by Section 6.5 of this Agreement for the payment thereof, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursement of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "B". Within thirty (30) days after the Final Requisition is made, the NMFA shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Borrower/Grantee pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "B". The NMFA shall additionally calculate the amount of the Administrative Fee that has accumulated during that twenty-four (24) month period from the Closing Date, and shall include such amount in the first Loan Payment due from the Borrower/Grantee on the Final Debt Service Schedule.

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Borrower/Grantee and the NMFA acknowledge and agree that the obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount, the Administrative Fee and other amounts owed by the Borrower/Grantee as herein provided, and that the Agreement shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee or the State within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Borrower/Grantee moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Borrower/Grantee hereunder, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Water Project Fund. All Loan Payments made by the Borrower/Grantee to the NMFA to repay the Loan Amount and interest thereon, if any, shall be deposited into the Water Project Fund.

Section 6.3 Manner of Payment. The Loan Amount and Administrative Fee shall be payable by the Borrower/Grantee to the Lender/Grantor in annual installments on June 1 beginning after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the NMFA at the address designated in Section 11.1 of this Agreement. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder. Notwithstanding any dispute between the Borrower/Grantee and the NMFA, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

Section 6.5 No Penalty for Prepayment of the Loan Amount. The Loan Amount shall be pre-payable by the Borrower/Grantee at the conclusion of the Interim Period without penalty.

Section 6.6 Lender/Grantor's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount, Administrative Fee and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee the Lender/Grantor agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the Lender/Grantor no longer holds or maintains any lien or claim against the Pledged Revenues.

ARTICLE VII THE PROJECT

Section 7.1 Agreement to Acquire, Complete and Maintain the Project.

(a) The Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire, complete, operate and maintain the Project lawfully and efficiently. The Project shall be constructed and completed substantially in accordance with the approved plans and specifications, and shall fully incorporate the available technologies and operational design for water use efficiency described in the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(b) As provided by NMSA 1978, § 72-4A-7(A)(1), as amended, of the Act, the Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, located, completed, installed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other qualifying entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall be subject to approval by the Lender/Grantor and shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

Section 7.2 Accounting for Amounts Credited to the Project Account. So long as no Event of Default shall occur and provided that all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of the plans and specifications), upon receipt by the NMFA of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of design, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the NMFA shall, in its sole and absolute discretion: (1) submit a request for payment to the State Board of Finance for payment; and/or (2) disburse from the Water Project Fund, amounts which together are sufficient to pay the requisition in full. The NMFA shall make the appropriate entry in the Project Account reflecting the amount of the payment. The certification provided pursuant to this Section 7.2 in support of the requisition must be acceptable in form and substance to the NMFA and, at its request, the Water Trust Board. The Borrower/Grantee shall provide such records or access to the Project as the NMFA, and, at its request, the Water Trust Board, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's requisition requests made hereunder.

Section 7.3 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Water Project Fund of the Loan/Grant Amount, or any portion thereof, without the written approval of the NMFA and, at its request, the Water Trust Board, to reimburse any expenditure made prior to the Closing Date.

Section 7.4 Borrower/Grantee Reporting to Lender/Grantor. During the acquisition implementation, installation and construction of the Project, the Borrower/Grantee shall provide the Lender/Grantor with a quarterly written report executed by an Authorized Officer of the Borrower/Grantee, in the form attached as Exhibit "D" hereto or in another form reasonably acceptable to the Lender/Grantor, describing the status of the Project as of the report date, uses of Loan/Grant funds during the quarterly period ending on the report date, and requests for distributions of Loan/Grant funds anticipated to occur during the quarterly period immediately following the report date. The first quarterly report shall be due on March 31, 2026, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. No reports shall be required after the report date next following final distribution of the Loan/Grant Funds,

unless specifically required by the NMFA or the Water Trust Board. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, (c) a description of the percentage of completion of the Project; and (d) a timeline of projected milestones.

Section 7.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the NMFA substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, either (1) the Project has been completed, or (2) that the portion of the Loan/Grant Amount needed to complete the Project has been disbursed in accordance with the terms of this Agreement. No portion of the Loan/Grant Amount shall be disbursed after expiration of the Interim Period.

Section 7.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds; Termination of Pledge.

(a) Upon the completion of the Project as signified by delivery of the completion certificate required by Section 7.5 hereof, the NMFA shall determine, by reference to the Project Account, whether any portion of the authorized Loan/Grant Amount remains unexpended and shall dispose of such unexpended proceeds in accordance with law;

(b) In the event that a portion of the Loan/Grant Amount remains unexpended after the expiration of the Interim Period, the NMFA shall dispose of such funds in accordance with law.

Upon the occurrence of either event described in (a) or (b) above, the NMFA shall make the appropriate entry in the Project Account and, upon such entry, the pledge of the Loan/Grant Amount established in this Agreement shall terminate.

ARTICLE VIII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 8.1 Further Assurances and Corrective Instruments. The Lender/Grantor and the Borrower/Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues and for carrying out the intention hereof.

Section 8.2 Representatives of Lender/Grantor or of Borrower/Grantee. Whenever under the provisions hereof the approval of the Lender/Grantor or the Borrower/Grantee is required, or the Borrower/Grantee, or the Lender/Grantor is required to take some action at the request of either of them, such approval or such request shall be given for the Lender/Grantor or for the Borrower/Grantee, by an Authorized Officer of the Lender/Grantor or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 8.3 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 8.4 Non-Discrimination in Employment. Except as otherwise specifically provided in the laws, statutes, ordinances or regulations of the Borrower/Grantee, the Borrower/Grantee shall require in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party that there shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin.

Section 8.5 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the "Little Miller Act") is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the "Little Miller Act". If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be treated as Gross Revenues.

Section 8.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin; and

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, § 13-4-18, as amended.

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, § 13-4-11, as amended.

Section 8.7 Application of Act and Board Rules. While this Agreement is outstanding, the Lender/Grantor and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and Board Rules are incorporated into this Agreement by reference.

Section 8.8 Continuing Disclosure. The Borrower/Grantee shall provide continuing disclosure to the NMFA, as the NMFA may require, that shall include, but not be limited to: annual

audits and notification of any event deemed material by the NMFA, including but not limited to, any event which may or does affect the Pledged Revenues, the ability of the Borrower/Grantee to repay the loan, and the default of the Borrower/Grantee in performance or observance of any covenant, term, or condition contained in any other loan agreement.

ARTICLE IX INSURANCE; NON-LIABILITY OF LENDER/GRANTOR

Section 9.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State's risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the Lender/Grantor as an additional insured with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a qualifying entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other qualifying entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other qualifying entity that the Lender/Grantor is a third party beneficiary of such written agreement.

Section 9.2 Non-Liability of Lender/Grantor.

(a) Lender/Grantor shall not be liable in any manner for the Project, Borrower/Grantee's use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b) Lender/Grantor shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the NMFA for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c) From and to the extent of the Pledged Revenues, and to the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the NMFA harmless against and from all claims, by or on behalf of any person, firm, corporation, or other legal entity, arising from the acquisition or operation of the Project during the Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the NMFA harmless, from and to the extent of the available Pledged Revenues, and to the extent permitted by applicable law, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the NMFA, shall defend the NMFA in any such action or proceeding.

ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an "Event of Default" under this Agreement:

(a) Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable;

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the Lender/Grantor unless the Lender/Grantor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Lender/Grantor but cannot be cured within the applicable thirty (30) day period, the Lender/Grantor will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 10.1(b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is false or misleading in any material respect;

(d) A petition is filed against the Borrower/Grantee under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the NMFA shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Borrower/Grantee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Borrower/Grantee for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the NMFA shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the NMFA.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Lender/Grantor may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any obligations of the Borrower/Grantee in this Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

(b) Terminate this Agreement;

(c) Cease disbursing any further amounts from the Project Account;

(d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Lender/Grantor;

(f) Intervene in judicial proceedings that affect this Agreement or the Pledged Revenues; or

(g) Cause the Borrower/Grantee to account as if it were the trustee of an express trust for all of the Pledged Revenues;

(h) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Agreement or to enforce any other of its rights hereunder; or

(i) Apply any amounts in the Project Account toward satisfaction of any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid from only available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

Section 10.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lender/Grantor is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borrower/Grantee or the Lender/Grantor to exercise any remedy reserved in this Article X, it

shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Lender/Grantor may, in its sole discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the Lender/Grantor in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the NMFA. In case of any such waiver or rescission, or in case any proceeding taken by the Lender/Grantor, on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Lender/Grantor shall be restored to its former position and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Borrower/Grantee shall default under any of the provisions hereof and the NMFA shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower/Grantee herein contained, the Borrower/Grantee agrees that it shall, on demand therefor, pay to the NMFA the fees of such attorneys and such other expenses so incurred, to the extent such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Borrower/Grantee under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues of the Borrower/Grantee.

ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

City of Truth or Consequences
Attn.: City Manager
505 Sims Street
Truth or Consequences, New Mexico 87901

If to the NMFA, then to:

New Mexico Finance Authority
Attn.: Chief Executive Officer
810 W. San Mateo Road
Santa Fe, New Mexico 87505

The Borrower/Grantee or the Lender/Grantor may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Lender/Grantor and the Borrower/Grantee and their respective successors and assigns, if any.

Section 11.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the Lender/Grantor and the Borrower/Grantee on the Closing Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Closing Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.

Section 11.4 Amendments. This Agreement may be amended only with the written consent of both of the parties hereto. The consent of the NMFA for amendments not affecting the terms of payment of the loan component of this Agreement may be given by an Authorized Officer of the NMFA. The execution of any such consent by an Authorized Officer of the NMFA shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Agreement.

Section 11.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Lender/Grantor, either directly or through the NMFA, or against any officer, employee, director or member of the Borrower/Grantee, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Borrower/Grantee or of the NMFA is hereby expressly waived and released by the Borrower/Grantee and by the NMFA as a condition of and in consideration for the execution of this Agreement.

Section 11.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments and the Administrative Fee hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.9 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 11.10 Further Assurances and Corrective Instruments. The NMFA and the Borrower/Grantee will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 11.11 NMFA and Borrower/Grantee Representatives. Whenever under the provisions hereof the approval of the NMFA or the Borrower/Grantee is required, or the Borrower/Grantee or the NMFA is required to take some action at the request of the other, such approval or such request shall be given for the NMFA or for the Borrower/Grantee by an Authorized Officer of the NMFA or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 11.12 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO NMSA 1978, § 6-21-26.

[Signature pages follow]

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the NMFA, on behalf of itself, has executed this Agreement, which was approved by the Water Trust Board on April 22, 2025 and by the NMFA's Board of Directors on May 22, 2025, in its corporate name by its duly authorized officer; and the Borrower/Grantee has caused this Agreement to be executed in its corporate name and the seal of the Borrower/Grantee affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

LENDER/GRANTOR:

NEW MEXICO FINANCE AUTHORITY

By 
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

SUTIN THAYER & BROWNE
A PROFESSIONAL CORPORATION
As Loan/Grant Counsel

By 
Eduardo A. Duffy

APPROVED FOR EXECUTION BY OFFICERS OF THE
NEW MEXICO FINANCE AUTHORITY:

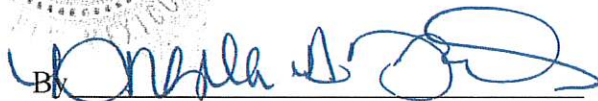
By 
Mark Chaiken, General Counsel

BORROWER/GRANTEE:

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By 
Rolf Hechler, Mayor



By 
Angela Torres, City Clerk-Treasurer

7570284

EXHIBIT "A"

TERM SHEET

**\$8,090,000 WATER PROJECT FUND LOAN/GRANT TO THE
CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO**

Project Description:	The Project is for flood prevention. The Loan/Grant Amount will be used only for Eligible Items necessary to complete the Project. In particular, the Project will consist of constructing flood control improvements including breach and storm drain to the Cantrell Dam, and shall include such other related work and revisions necessary to complete the Project. The Project may be further described in the Application and in the final plans and specifications for the Project approved by the Water Trust Board and the NMFA as provided by this Agreement. However, in the event of any inconsistency, the description of the Project as stated in this Term Sheet shall control.
Grant Amount:	\$7,281,000
Loan Amount:	\$809,000
Pledged Revenues:	Revenues received by the Borrower/Grantee under the Tax Ordinance, being revenues of a one-eighth of one percent (0.125%) of the Municipal Infrastructure Gross Receipts Tax, imposed by the Borrower/Grantee's Tax Ordinance No. 389, as amended by Ordinance No. 472, on March 26, 1992, which taxes have been de-earmarked and are now enforceable under NMSA 1978, § 7-19D-9, as amended.
Outstanding Senior Obligations for Pledged Revenues:	None
Outstanding Parity Obligations:	CIF-6441 maturing in 2046 CIF-6442 maturing in 2046 WPF-6323 maturing in 2046
Authorizing Legislation:	Borrower/Grantee Resolution No. 26 25/26, adopted December 3, 2025
Additional Funding Amount:	\$809,000
Closing Date:	January 16, 2026
Project Account Amount:	\$8,090,000

A-1

Loan/Grant Agreement
Truth or Consequences, Loan/Grant No. WPF-6621

Expense Account Deposit: \$0.00

Administrative Fee: 0.25%

Conditions to be satisfied prior to first disbursement of Loan/Grant funds: Delivery to NMFA of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the City Clerk-Treasurer of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the Mayor and attested to by the City Clerk-Treasurer of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant: All Conditions defined in the Agreement.

EXHIBIT "B"

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount and Administrative Fee shall be payable by the Borrower/Grantee to the Lender/Grantor in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2028 and ending June 1, 2047. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty. The Administrative Fee shall be due and payable annually on June 1 of each year while the Loan, or any portion thereof, remains outstanding.

[INTERIM DEBT SERVICE SCHEDULE ATTACHED]

BOND DEBT SERVICE

City of Truth or Consequences
Cantrell Dam breach & watershed drainage (WPF-6621)

<i>Period Ending</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Debt Service</i>
06/01/2028	36,859	0.250%	4,803.44	41,662.44
06/01/2029	39,732	0.250%	1,930.35	41,662.35
06/01/2030	39,831	0.250%	1,831.02	41,662.02
06/01/2031	39,931	0.250%	1,731.45	41,662.45
06/01/2032	40,031	0.250%	1,631.62	41,662.62
06/01/2033	40,131	0.250%	1,531.54	41,662.54
06/01/2034	40,231	0.250%	1,431.21	41,662.21
06/01/2035	40,332	0.250%	1,330.64	41,662.64
06/01/2036	40,433	0.250%	1,229.81	41,662.81
06/01/2037	40,534	0.250%	1,128.72	41,662.72
06/01/2038	40,635	0.250%	1,027.39	41,662.39
06/01/2039	40,737	0.250%	925.80	41,662.80
06/01/2040	40,839	0.250%	823.96	41,662.96
06/01/2041	40,941	0.250%	721.86	41,662.86
06/01/2042	41,043	0.250%	619.51	41,662.51
06/01/2043	41,146	0.250%	516.90	41,662.90
06/01/2044	41,248	0.250%	414.04	41,662.04
06/01/2045	41,352	0.250%	310.92	41,662.92
06/01/2046	41,455	0.250%	207.54	41,662.54
06/01/2047	41,559	0.250%	103.90	41,662.90
	809,000		24,251.62	833,251.62

EXHIBIT "C"

**FORM OF REQUISITION
(Water Project Fund)**

RE: \$8,090,000 Loan/Grant Agreement by and between the New Mexico Finance Authority, as Lender/Grantor, and the City of Truth or Consequences, New Mexico, as Borrower/Grantee (the "Agreement" or "Loan/Grant Agreement")

Loan/Grant No. WPF-6621

Closing Date: January 16, 2026

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse from the Project Account with regard to the above-referenced Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. _____ PAYMENT AMOUNT: \$ _____

PAYEE'S NAME: _____

PAYEE'S ADDRESS: _____

II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

III. WIRING INFORMATION:

BANK NAME:	
ABA ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$ _____
Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$ _____

TOTAL REQUIRED MATCH: \$809,000

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the Lender/Grantor pursuant to the Water Project Finance Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition, and is a proper charge against the Project Account. All representations contained in the Agreement and the related closing documents remain true and correct, and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for Qualified Projects; (3) inspecting construction of Qualified Projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for Qualified Projects; (6) acquiring land, easements or rights of way; (7) eligible legal costs associated with development of Qualified Projects, within limits set forth in the Loan/Grant Agreement.

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved on behalf of the New Mexico Finance Authority by the New Mexico Environment Department and/or the Office of the State Engineer, has or will be acquired in compliance with applicable procurement laws and regulations, and has or will be inspected and approved in accordance with applicable laws and regulations.

Capitalized terms used herein, are used as defined or used in the Loan/Grant Agreement.

DATE: _____

AUTHORIZED OFFICER

(As Provided in the Loan/Grant Agreement)

Print Name: _____

Print Title: _____

WATER PROJECT FUND STATUS REPORT
PREPARED FOR THE
NEW MEXICO FINANCE AUTHORITY

***All fields must be completed.**

EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: \$8,090,000 Loan/Grant Agreement by and between the NMFA, as Lender/Grantor, and the City of Truth or Consequences, New Mexico, as Borrower/Grantee (the "Agreement" or "Loan/Grant Agreement")

Loan/Grant No. WPF-6621

Closing Date: January 16, 2026

TO: NEW MEXICO FINANCE AUTHORITY

I, _____, the _____ of the
[Name] [Title or position]

Borrower/Grantee, hereby certify as follows:

1. The project described in the Loan/Grant Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on _____, 20__.

2. The total cost of the Project was \$ _____.

3. Cost of the Project paid from the Loan/Grant Amount was \$ _____.

4. Cost of the Project paid from the Additional Funding Amount was \$ _____.

5. The portion of the Loan/Grant Amount unexpended for the Project is \$ _____.

6. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Loan/Grant Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By _____

Its _____

EXHIBIT "F"

DOCUMENTS

1. Open Meetings Act Resolution No. 01 25/26 adopted by the Borrower/Grantee on July 9, 2025
2. Resolution No. 26 25/26 adopted on December 3, 2025, Notice of Meeting, Meeting Agenda, Minutes and Affidavit of Publication of Notice of Adoption of Resolution in the *Sierra County Sentinel*
3. Loan/Grant Agreement
4. General and No Litigation Certificate of the Borrower/Grantee
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate of the Borrower/Grantee
7. Final Opinion of Counsel for the Borrower/Grantee
8. Approving Opinion of Sutin Thayer & Browne APC, Loan/Grant Counsel to the NMFA
9. NMFA Application and Project Approval (informational only)

PROFESSIONAL MULTIPLE ON CALL ENGINEER AND ARCHITECT SERVICES

CONTRACT #2024-09-001

THIS AGREEMENT is made and entered into by and between City, hereinafter referred to as the "City " and **Wilson & Company, Inc., Architects & Engineers**, (Contractor), hereinafter referred to as the "Engineer and Architect", and is effective as of the date set forth below upon which it is executed by the Mayor, Mayor Pro-Tem and Board of City Commissioners.

WHEREAS, the City issued a Request for Proposals (RFP) to provide On-Call Engineer and Architect Services under RFP NO. 23-24-005; and

WHEREAS, the Engineer and Architect submitted its original proposal and was selected under RFP NO. 23-24-005; and

WHEREAS, the City desires to engage the Engineer and Architect to render certain Engineer and Architect services, as needed, and the Engineer and Architect is willing to provide such services and to enter into this Master Professional Engineer and Architect Design Services Agreement; and

WHEREAS, this Master Agreement including all Exhibits and any subsequently awarded Task Orders for Professional Services form the Contract Documents and are all as fully a part of the Contract as if attached to this Agreement; and

WHEREAS, the Engineer and Architect was selected to provide and perform such Engineer and Architect Services as provided for within this Agreement; and

NOW, THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The Engineer and Architect hereby agrees to perform professional Engineer and Architect Design services relevant to each project assigned in accordance with the terms and conditions set forth herein.

Individual project assignments will be made by Task Orders, which are individual amendments to this contract and outline the scope of work, period of performance and compensation.

The City agrees to compensate the Engineer and Architect as set forth in Article 2 of this Agreement.

2. Compensation.

A. The City shall pay the Engineer and Architect in full payment for services satisfactorily performed under the individual Task Orders based on the schedule of payments contained in the individual task order. In no event will the Engineer and Architect be paid any amount in excess of the specified total amount payable in the individual task order without the task order being amended in writing.

B. Payment is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Article 1, Scope of Work.

C. Engineer and Architect must submit a detailed statement accounting for all services performed, as specified in the individual task order. If the City finds that the services are not acceptable, within 15 days after the date of receipt of written notice from the Engineer and Architect that payment is requested, it shall provide the Engineer and Architect a letter of exception explaining the defect or objection to the services, and outlining steps the Engineer and Architect may take to provide remedial action. The City will continue to pay Engineer and Architect for any undisputed amounts pursuant to Article 2(A). Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Engineer and Architect within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. The payment of taxes due for any money received under this Agreement shall be the Engineer and Architect 's sole responsibility and shall be reported under the Engineer and Architect Federal and State tax identification number(s).

3. Term.

This Agreement is for one (1) year from the date of approval by the City of T or C, Mayor, Mayor Pro-Tem and Board of City Commissioners. This Contract will automatically renew on an annual basis, for up to three (3) additional one (1) year terms unless terminated pursuant to Article 4 (Termination for Convenience), Article 5 (Termination for Cause), or Article 6 (Appropriations). In accordance with Section 13-1-150 NMSA 1978, no term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in Section 13-1-150 NMSA 1978.

4. Termination For Convenience.

A. Termination. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least thirty (30) days prior to the intended date of termination. Except as otherwise allowed or provided under this Agreement, the City 's sole liability upon such termination shall be to pay for acceptable work ordered and performed prior to the Engineer and Architect 's receipt of the notice of termination, if the City is the terminating party, or the Engineer and Architect 's sending of the notice of termination, if the Engineer and Architect is the terminating party; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or

breaches of this Agreement. The Engineer and Architect shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Engineer and Architect if the Engineer and Architect becomes unable to perform the services contracted for, as determined by the City or if, during the term of this Agreement, the Engineer and Architect or any of its officers or employees is indicted for fraud, embezzlement or other crime due to misuse of government funds or due to the Appropriations paragraph herein.

THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE CITY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE ENGINEER AND ARCHITECT'S DEFAULT/BREACH OF THIS AGREEMENT.

B Termination Management. Immediately upon receipt by either the City or the Engineer and Architect of notice of termination of this Agreement, the Engineer and Architect shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City ; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Engineer and Architect with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

5. Termination For Cause.

A. City may by written notice terminate this Agreement in whole or in part for Engineer and Architect's default if the Engineer and Architect fails to comply with the provisions of this Agreement or fails to make progress so as to endanger performance and does not cure such failure within a reasonable period of time. In such event, City may otherwise secure the materials, supplies or services ordered, and Engineer and Architect shall be liable for damages suffered by City thereby, including incidental and consequential damages. If after notice of termination, City determines Engineer and Architect was not in default, or if Engineer and Architect's default is due to failure of City, termination shall be deemed for the convenience of City. The rights and remedies of City provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement as used in this paragraph, the word "Engineer and Architect" includes Engineer and Architect's sub-suppliers at any tier.

B. In the event a termination for cause notice is issued by the City, the Engineer and Architect shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City ; 2) comply with all directives issued by the City in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Engineer and Architect with contract funds shall become property of the City upon termination and shall be submitted to the City as soon as practicable.

6. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Board of City Commissioners for the performance of each task order assigned under this Agreement. If sufficient appropriations and authorization are not made by the Board of City Commissioners, this Agreement shall terminate immediately upon written notice being given by the City to the Engineer and Architect. The City's decision as to whether sufficient appropriations are available shall be accepted by the Engineer and Architect and shall be final. If the City proposes an amendment to the Agreement to unilaterally reduce funding, the Engineer and Architect shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. Status of Engineer and Architect.

The Engineer and Architect and its employees are independent Engineer and Architects performing professional services for the City and are not employees of the City of T or C. The Engineer and Architect and its employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of T or C as a result of this Agreement. The Engineer and Architect acknowledges that all sums received hereunder are reportable by the Engineer and Architect for tax purposes, including without limitation, self-employment and business income tax. The Engineer and Architect agrees not to purport to bind the City of T or C unless the Engineer and Architect has express written authority to do so, and then only within the strict limits of that authority.

8. Assignment.

The Engineer and Architect shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

9. Subcontracting.

The Engineer and Architect shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. Subcontractors listed in an approved task order constitute approval of the City. No such subcontract shall relieve the Engineer and Architect from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the City. In all cases, the Engineer and Architect is solely responsible for fulfillment of this Agreement.

10. Release.

Final payment of the amounts due under each task order issued under this Agreement shall operate as a release of the procuring agency of the City, its officers and employees, and the City of T or C from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

11. Confidentiality.

Any confidential information provided to or developed by the Engineer and Architect in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Engineer and Architect without the prior written approval of the City.

12. Product of Service – Copyright.

All materials developed or acquired by the Engineer and Architect under this Agreement shall become the property of the City of T or C and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Engineer and Architect under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Engineer and Architect.

13. Conflict of Interest; Governmental Conduct Act.

A. The Engineer and Architect represents and acknowledges that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Engineer and Architect further represents and acknowledges that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Engineer and Architect specifically represents and acknowledges that:

1) in accordance with Section 10-16-4.3 NMSA 1978, the Engineer and Architect does not employ, has not employed, and will not employ during the term of this Agreement any City employee while such employee was or is employed by the City and participating directly or indirectly in the City 's contracting process.

2) this Agreement complies with Section 10-16-7(B) NMSA 1978 because (i) the Engineer and Architect is not a public officer or employee of the City ; (ii) the Engineer and Architect is not a member of the family of a public officer or employee of the City ; (iii) the Engineer and Architect is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Engineer and Architect is a public officer or employee of the City , a member of the family of a public officer or employee of the City , or a business in which a public officer or employee of the City or the family of a public officer or employee of the City has a substantial interest, public notice was given as required by Section 10-16-7(B) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with Section 10-16-8(C) NMSA 1978, (i) the Engineer and Architect is not, and has not been represented by, a person who has been a public officer or employee of the City within the preceding year and whose official act directly resulted in this Agreement and (ii) the Engineer and Architect is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the City whose official act, while in City employment, directly resulted in the City 's making this Agreement;

4) in accordance with Section 10-16-13 NMSA 1978, the Engineer and Architect has not directly participated in the preparation of specifications, qualifications or evaluation

criteria for this Agreement, or any procurement related to this Agreement; and

5) in accordance with Section 10-16-3 and Section 10-16-13.3 NMSA 1978, the Engineer and Architect has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the City.

C. Engineer and Architect's representations and acknowledgements in Paragraphs A and B of this Article 13 are material representations of fact upon which the City relied when this Agreement was entered into by the parties. Engineer and Architect shall provide immediate written notice to the City if, at any time during the term of this Agreement, Engineer and Architect learns that Engineer and Architect's representations and acknowledgements in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Engineer and Architect's representations and acknowledgements in Paragraphs A and B of this Article 13 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the City and notwithstanding anything in the Agreement to the contrary, the City may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 13(B).

14. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories. Executed task orders are amendments to this agreement.

15. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. Penalties for Violation of Law.

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

17. Equal Opportunity Compliance.

The Engineer and Architect agrees to abide by all federal, state and City laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws, the Engineer and Architect assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to

discrimination under any program or activity performed under this Agreement. If Engineer and Architect is found not to be in compliance with these requirements during the life of this Agreement, Engineer and Architect agrees to take appropriate steps to correct these deficiencies.

18. Applicable Law.

In any action, suit or legal dispute arising from this Agreement, the Engineer and Architect agrees that the laws of the State of New Mexico shall govern, and that venue will lie in the Seventh Judicial District Court in Sierra County. By execution of this Agreement, Engineer and Architect acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

19. Workers Compensation.

The Engineer and Architect agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Engineer and Architect fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the City.

20. Records and Financial Audit.

The Engineer and Architect shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the City, the City's auditor, the New Mexico Department of Finance and Administration and the New Mexico State Auditor. The City shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payments

21. Disclaimer and Hold Harmless.

City of T or C shall not be liable to the Engineer and Architect, or the Engineer and Architect's successors, heirs, administrators, or assigns, for any loss, damage, or injury, whether to Engineer and Architect's person or property, occurring in connection with Engineer and Architect's performance of Engineer and Architect's duties according to this Agreement. Engineer and Architect shall hold City of T or C harmless from all loss, damage, and injury, including court costs and reasonable attorney fees, incurred by the City of T or C in connection with the performance by Engineer and Architect of Engineer and Architect's duties according to this Agreement.

22. Indemnification.

Engineer and Architect shall shield (except for claims against professional liability insurance), indemnify and hold harmless the City, its Commissioners, and employees from damages and expenses, including reasonable attorney fees, arising or alleged to have arisen out of any negligent act of Contractor or anyone directly or indirectly employed by Contractor, or arising in any from the activities of or services by the Contractor under this Contract. Notwithstanding the foregoing, Contractor shall have no obligation to indemnify, defend or hold harmless the City, its Commissioners, employees or agents from or against any claims or actions arising from the gross negligence, reckless disregard for the safety of others or willful misconduct of the City, its Commissioners, employees or agents. Contractor shall safeguard all

claims and litigation. The City shall have the right to choose its own legal counsel.

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless expressed in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Authority.

If Engineer and Architect is other than a person, the individual(s) signing this Agreement on behalf of Engineer and Architect represents and acknowledges that he or she has the power and authority to bind Engineer and Architect, and that no further action, resolution, or approval from Engineer and Architect is necessary to enter into a binding contract.

26. Lobbying.

No federal appropriated funds can be paid or will be paid, by or on behalf of the Engineer and Architect, or any person for influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, or the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, or modification of any Federal contract, grant, loan, or cooperative agreement. If any funds other than federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any City, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection of this federal contract, grant, loan, or cooperative agreement, the ENGINEER AND ARCHITECT shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

27. Approval of Engineer and Architect Personnel.

Personnel proposed in the Engineer and Architect's written proposal to the City are considered material to any work performed under this Agreement. No changes of personnel will be made by the Engineer and Architect without prior written consent of the procuring agency of the City. Replacement of any Engineer and Architect personnel, if approved, shall be with personnel of equal ability, experience and qualifications. The Engineer and Architect will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. The procuring agency of the City shall retain the right to request the removal of any of the Engineer and Architect's personnel at any time.

28. Survival.

The agreement Articles titled "Patent, Copyright, Trademark, and Trade Secret Indemnification" and "Indemnification" shall survive the expiration of this agreement. Software licenses, leases, maintenance and any other unexpired agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

29. Succession.

This agreement shall extend to and be binding upon the successors and assigns of the parties.

30. Force Majeure.

A party shall be excused from performance under this agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

31. Mediation.

In the event a dispute arises as to the rights and obligations among the parties hereto, the parties agree to attempt to resolve the dispute through mediation as a condition precedent to seeking legal and equitable remedies. The parties agree to evenly split the costs of any such mediation services. The parties shall mutually agree upon the choice of mediator. In the event the parties have not agreed upon a mediator within twenty (20) days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the New Mexico Association of Counties and the parties shall utilize a striking process until a mediator is agreed upon.

32. Notice to Proceed.

It is expressly understood that this Agreement is not binding upon the City until it is executed by the Board of City Commissioners after voting on the contract at a public meeting. The Engineer and Architect is not to proceed with its obligations under the Agreement until the Engineer and Architect has received a fully signed copy of the Agreement. Further, each individual task order must be fully executed prior to proceeding with any work.

33. Attorney's Fees.

In the event this Agreement results in dispute, mediation, litigation, or settlement between the parties to this Agreement, the prevailing party of such action shall NOT be entitled to an award of attorneys' fees and court costs.

34. Cooperation.

All parties hereto will fully cooperate with the other and their respective counsel, accountant, and agents in connection with any steps required to be taken under this Agreement.

35. Incorporation and Order of Precedence.

Request for Proposals RFP NO. 23-24-005 and the Engineer and Architect's proposal are incorporated by reference into this agreement and are made a part of this agreement. In the event

of any conflict among these documents, the following order of precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. this contract itself; then
3. the Request for Proposals; then
4. the executed task orders with the scope of work, timeframe for completion, and compensation, in reverse chronological order; then
5. the Engineer and Architect 's proposal.

36. Patent, Copyright, Trademark and Trade Secret Indemnification.

A. The Engineer and Architect shall defend, at its own expense, the City of T or C against any claim that any product or service provided under this agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and reasonable attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against the City of T or C based upon the Engineer and Architect 's trade secret infringement relating to any product or service provided under this agreement, the Engineer and Architect agrees to reimburse the City of T or C for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the City of T or C shall:

- i. gives the Engineer and Architect prompt written notice of any claim;
- ii. allow the Engineer and Architect to control the defense or settlement of the claim; and
- iii. cooperate with the Engineer and Architect in a reasonable way to facilitate the defense or settlement of the claim.

B. If any product or service becomes, or in the Engineer and Architect 's opinion is likely to become the subject of a claim of infringement, the Engineer and Architect shall at its option and expense:

- i. provides a procuring agency of the City the right to continue using the product or service;
- ii. replace or modify the product or service so that it becomes non-infringing; or
- iii. accept the return of the product or service and refund an amount equal to the depreciated value of the returned product or service, less the unpaid portion of the purchase price and any other amounts, which are due to the Engineer and Architect. The Engineer and Architect 's obligation will be void as to any product or service modified by the procuring agency of the City to the extent such modification is the cause of the claim.

37. Professional Liability Insurance.

Engineer and Architect agrees to maintain in full force throughout the duration of the Agreement a liability insurance policy with a minimum coverage of: Comprehensive General Liability - \$1,000,000 per occurrence, \$2,000,000 General Aggregate; Professional liability-

\$1,000,000 per occurrence, \$2,000,000 Annual Aggregate. Occurrence type, if available; if not "Claims Made" type with a minimum of a six (6) year tail. The City will be provided an updated certificate of insurance on an annual basis.

38. Compliance With Laws

In providing the scope of services outlined herein, the Engineer and Architect and the City shall comply with all applicable laws, ordinances, and codes of the Federal, State, and local governments, in effect during Engineering and Architect's performance of their services.

39. Construction and Severability

If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.

41. Entire Agreement

This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

MAYOR, MAYOR PRO- TEM, BOARD OF CITY COMMISSIONERS

42. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To: City of T or C

Leiandra Guerra, Chief Procurement Officer
505 Sims
Truth or Consequences, NM 87901

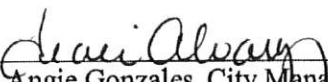
To the Engineer-Architect: Wilson & Company, Inc., Architects & Engineers

Printed Name: Brian P McBride, VP

Address: Wilson & Company, Inc., Architects & Engineers
4401 Masthead NE, Ste 150
Albuquerque, NM 87109

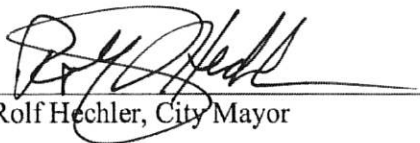
By:  Date: 10/09/2024
Brian P. McBride, Vice President. Water-Wastewater

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the County Chief Procurement Officer below:

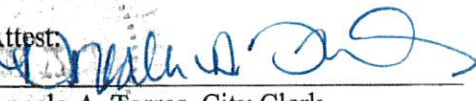
By:  Date: 10/17/24
For Angie Gonzales, City Manager

MAYOR, MAYOR PRO- TEM, BOARD OF CITY COMMISSIONERS

APPROVED, ADOPTED AND PASSED on this 9th day of October 2024

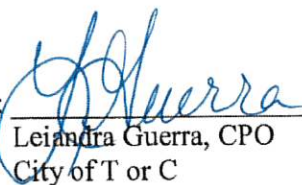


Rolf Hechler, City Mayor

Attest: 

Angela A. Torres, City Clerk

City Chief Procurement Officer:

By:  Date: 10/17/24

Leianara Guerra, CPO
City of T or C



City of Truth or Consequences

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: H1(6)

SUBJECT: Approval of Purchase Requisitions over \$60,000
DEPARTMENT: Procurement
DATE SUBMITTED: February 20, 2026
SUBMITTED BY: Carlos Miyagishima, Chief Procurement Officer
WHO WILL PRESENT THE ITEM: Carlos Miyagishima, Chief Procurement Officer

Summary/Background:

Per Resolution No 46 20/27 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases Over \$60,000).

Recommendation:

Approval Recommended by Chief Financial Officer. Please see the attached purchase item list.

Attachments:

- NMFA Projects Fund
 - Shovel Ready Water System Improvements Project
 - Change order to P.O. 82941
 - Additional funds in the materials testing allowance to ensure pipe is properly bedded and installed for longevity.
 - This will also add an allowance to installation of InstaValves to maintain continuous water service and minimize system disruptions when shutdowns are not feasible or are operationally constrained.
- [Click here to enter text.](#)

Fiscal Impact (Finance): Yes

- \$115,000
- NMFA Project Funds - Infrastructure

Legal Review (City Attorney): N/A

None.

Approved For Submittal By: ☒ Department Director

Reviewed by: ☒ City Clerk ☒ Finance ☐ Legal ☒ Other: Carlos Miyagishima, Chief Procurement Officer

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. [Click here to enter text.](#)

Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

☐ Approved ☐ Denied ☐ Other: [Click here to enter text.](#)

File Name: CC agendas 2-25-26

Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Destiny Mitchell
Commissioner



505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.gov

Ingo Hoepfner
Commissioner

Chaz M. Glines
Commissioner

Gary Whitehead
City Manager

February 20, 2026

To City Mayor, Pro-Tem and Commissioners,

RE: CANTRELL DAM ENG CONSTRUCTION ADMIN SERVICES

The Procurement Department along with Community Development Department issued a Change Order for P.O. 82941 ITB #202-09-007 NMFA CIF 6441 SAP24-12460 for additional funds in the materials testing allowance to ensure pipe is properly bedded and installed for longevity. (Additional testing is needed due to the changing soil conditions). As well as adding an allowance to installation of InstaValves to maintain continuous water service and minimize system disruptions when shutdowns are not feasible or are operationally constrained.

I will defer to Jocelyn Holguin the Chief Financial Officer. Thank you.

Please, review the attached documents and approve the requested procurement. Thank you.

\$115,000

NMFA Projects Funds: 360-7044

Regards,

Carlos Miyagishima
Chief Procurement Officer

Commission Approved: Yes ☐ No ☐ Tabled ☐

Date of Approval/ Denied/Tabled: _____

Notes: _____ Purchase Order #82941

PROCUREMENTS \$60,000 AND OVER

2025-26 Fiscal Year

COMMISSION MEETING 02/25/2026

Number	Vendor Name	Description	Requested By	Department	Total Amount	Procurement Type
A.	J & H Services Inc.	Additional funds in the materials testing allowance to ensure pipe is properly bedded and installed for longevity. (Additional testing is needed due to the changing soil conditions). This will also add an allowance to installation of InstaValves to maintain continuous water service and minimize system disruptions when shutdowns are not feasible or are operationally constrained.	Carlos Miyagishima	Procurement	\$115,000.00	Change Order - NMFA Project Fund
TOTAL					\$ 115,000.00	

ATTEST:

Angela Torres, Clerk-Treasurer

Date

Rolf Hechler, Major

Date

PLEASE NOTE: This purchase request is for the City Fire Department utilizing fire funds.

CHANGE ORDER NO.: 1

Owner: The City of Truth or Consequences Owner's Project No.: 2025-09-007
Engineer: Wilson & Company, Inc. Engineer's Project No.: 2500015900
Contractor: J&H Services, Inc Contractor's Project No.:
Project: City of Truth or Consequences Shovel Ready Water Projects 1
Contract
Name: City of Truth or Consequences Shovel Ready Water Projects 1
Date Issued: 02/05/2026 Effective Date of Change Order: 02/05/2026

The Contract is modified as follows upon execution of this Change Order:

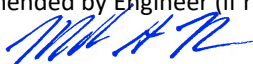
Description:

Increase the Materials Testing Allowance (Line Item 7 of the agreement) by \$50,000 to address additional testing and inspection services required due to the overall size, sequencing, and anticipated production rates of the waterline installation project. This adjustment ensures adequate quality assurance coverage and reduces the risk of delays, and potential rework without changing project scope or design intent.

Additionally add Line Item 9b InstaValve Allowance to the Agreement with a value of \$65,000 for the potential use of InstaValves or similar engineer approved devices to facilitate pressurized connections during waterline construction. The allowance is included to maintain continuous water service, minimize system disruptions, and support efficient construction sequencing where shutdowns are not feasible or are operationally constrained. Work performed under this allowance shall be governed by Section 01 0200 of the project manual.

Attachments: **None**

Change in Contract Price		Change in Contract Times [State Contract Times as either a specific date or a number of days]	
Original Contract Price (w/o NMGR):		Original Contract Times:	
\$ 5,319,894.00		Substantial Completion:	370
		Ready for final payment:	400
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order]: N/A		[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order]: N/A	
\$ 0.00		Substantial Completion:	0
		Ready for final payment:	0
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 5,319,894.00		Substantial Completion:	370
		Ready for final payment:	400
[Increase] [Decrease] this Change Order:		[Increase] [Decrease] this Change Order:	
\$ 115,000.00		Substantial Completion:	0
		Ready for final payment:	0
Contract Price incorporating this Change Order (w/o NMGR):		Contract Times with all approved Change Orders:	
\$ 5,434,894.00		Substantial Completion:	370
		Ready for final payment:	400

	Recommended by Engineer (if required)	Authorized by Owner
By:		
Title:	Project Manager	
Date:	2/5/2026	
	Authorized by Owner	Approved by Funding Agency (if applicable)
By:		
Title:		
Date:		

**CITY OF TRUTH OR CONSEQUENCES**

505 Sims St.
Truth or Consequences, NM 87901
PH: (575) 894-6673
FAX: (575) 894-0363

PURCHASE ORDER**PO Number:** 82941**Date:** 01/06/2026**Requisition #:** 95439**Vendor #:** 9349

ISSUED TO: J & H SERVICES INC
6616 GULTON COURT, NE SUITE 90
ALBUQUERQUE, NM 87109-

SHIP TO: City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

ITEM	UNITS	VENDOR PART #	DESCRIPTION	GL ACCT #	PROJ ACCT #	PRICE	AMOUNT
1	0		SHOVEL READY WA SYSTEM IMPROV PROJECT	360-7044-80860		0.00	1,900,052.32
2	0		SHOVEL READY WA SYSTEM IMPROV PROJECT	360-7044-45600		0.00	370,314.87
3	0		SHOVEL READY WA SYSTEM IMPROV PROJECT	380-7034-80860		0.00	3,495,067.93
COMM. DEV.							

SUBTOTAL:	5,765,435.12
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	5,765,435.12

Chief Purchasing Office

Date:

1/6/2026

Director of Finance:

Requisition approved electronically.

City Manager:

Requisition approved electronically.

1. Send INVOICE to Accounts Payable, address as noted above.
2. Prepay all transportation charges, and attach receipted freight bill to invoice.
3. Show our Purchase Order number on all invoices, Bills of Lading, Packages, etc.
4. This order must NOT be filled in greater or lesser quantities than shown without our written permission.
5. This order is issued with the understanding that if material is not according to our specifications, same will be returned at seller's expense.
6. The right is reserved to cancel this order if not filled within a reasonable length of time.
7. The City is exempt from all federal excise and state tax - ID# 01-405755-007



REQUISITION

Requisition #: 95439

Date: 10/16/2025

Vendor #: 9349

ISSUED TO: J & H SERVICES INC
6616 GULTON COURT, NE SUITE 90
ALBUQUERQUE, NM 87109-

SHIP TO: City of Truth or Consequences
505 Sims St.
Truth or Consequences, NM 87901

ITEM	UNITS DESCRIPTION	PROJECT #	PRICE GL ACCOUNT NUMBER	AMOUNT
1	0 SHOVEL READY WA SYSTEM IMPROV PROJECT		0.00 360-7044-80860	1,900,052.32
2	0 SHOVEL READY WA SYSTEM IMPROV PROJECT		0.00 360-7044-45600	370,314.87
3	0 SHOVEL READY WA SYSTEM IMPROV PROJECT		0.00 380-7034-80860	3,495,067.93

PO Description: SHOVEL READY WATER SYSTEM IMPROVEMENTS PROJECT

Detailed Description:

COMMISSION APPROVAL 10-22-25
ITB #202-09-007
NMFA CIF 6441
SAP24-12460 WITH NOTICE OF OBLIGATION
COMM. DEV.

Authorized By: _____

SUBTOTAL:	5,765,435.12
TOTAL TAX:	0.00
SHIPPING:	0.00
TOTAL	5,765,435.12

Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.org

Destiny Mitchell
Commissioner

Ingo Hoepfner
Commissioner

Gary Whitehead
City Manager

NOTICE OF AWARD

October 28, 2025

To Whom it May Concern,

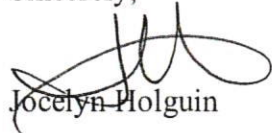
Re: Notice of Award: City of Truth or Consequences Shovel Ready Water Projects 1

This is to notify all interested parties of the Notice of Award Shovel Ready Water Project 1 has been City Commission approved on October 22, 2025. The City is now ready to move forward with the awarded contractor J & H Services Inc., for the construction contract amount of \$5,319,894.00

Sealed Bids were received at the City of Truth or Consequences Finance Department located at 505 Sims Street, Truth or Consequences, NM, on Thursday, October 9th, 2025, until 2:00 pm MST local time. At 2:15 pm MST, October 9, 2025, the bids were moved to the Commission Chambers at 405 W 3rd Street, Truth or Consequences, NM to be publicly opened and read. The following bids were received:

Based on the information provided we, therefore, will proceed with awarding the contract for the City of Truth or Consequences Shovel Ready Water Projects 1 to J & H Services Inc for a total contract award amount of \$5,319,894.00, excluding NMGRt with a the NMGRt of \$445,541.12, for a total contract amount of \$5,765,435.12 w/ NMGRt.

Sincerely,



Jocelyn Holguin

Finance Director/ CPO
City of Truth or Consequences

Cc: G. Whitehead, Manager, T. Alvarez, Assistant Manager, C. Miyagishima, CPO & M. Nasi, Wilson & Co.

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
SUBSEQUENT Notice of Obligation to Reimburse Grantee # 4**

DATE: 12/23/2025
TO: Grantee: Truth or Consequences, City of
Grantee Official Representative: Traci Alvarez
NOO Contact:
FROM: Department Representative: Steven Deal, NMED/CPB Project Manager
SUBJECT: Notice of Obligation to Reimburse Grantee
Project Number: SAP 24-I2460-GF

As the designated representative of the Department for Grant Agreement number SAP 24-I2460-GF entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Previous Third Party Obligations:

Vendor or Contractor:	<u>Smithco Construction Inc.-Main Street District Waterline Replacement</u>
Third Party Obligation Amount:	<u>\$462,574.30</u>
Termination Date:	<u>2/9/2027</u>
Vendor or Contractor:	<u>Wilson & Company-Combine 3 Projects, including Waterline on Broadway</u>
Third Party Obligation Amount:	<u>\$460,117.43</u>
Termination Date:	<u>2/9/2027</u>

The Total Amount of all Previously Issued Notice of Obligations: \$922,691.73

New Third Party Obligations:

Vendor or Contractor:	<u>J & H Services Inc.-Merged Projects Construcion Costs</u>
Third Party Obligation Amount:	<u>\$3,495,067.93</u>
Termination Date:	<u>2/9/2027</u>

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Appropriation Amount (adjusted for AIPP if applicable)	<u>\$4,400,000.00</u>
The Amount of this Notice of Obligation:	<u>\$3,495,067.93</u>
The Total Amount of all Previously Issued Obligations:	<u>\$922,691.73</u>
The Total Amount of all Notices of Obligations to Date:	<u>\$4,417,759.66</u>

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver:	<u>Erika Martinez</u>	Digitally signed by
Title:	<u>Capital Outlay Manager</u>	<u>Erika Martinez</u>
Signature:		Date: <u>2025.12.23</u>
Date:	<u>12/23/2025</u>	<u>13:04:07 -07'00'</u>

"Reimburse" as used throughout this Notice of Obligation to Reimburse includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of the Grant Agreement and are a valid liability of the Grantee.

CITY COMMISSION MEETING MINUTES
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
CITY COMMISSION CHAMBERS, 405 W. 3RD St.
WEDNESDAY, OCTOBER 22, 2025

A. CALL TO ORDER:

The meeting was called to order by Mayor Rolf Hechler at 4:00 p.m., who presided and Angela A. Torres, City Clerk-Treasurer, acted as Secretary of the meeting.

B. INTRODUCTION:

1. ROLL CALL:

Upon calling the roll, the following Commissioners were reported present.

Hon. Rolf Hechler, Mayor
Hon. Amanda Forrister, Mayor Pro-Tem
Hon. Destiny Mitchell, Commissioner
Hon. Merry Jo Fahl, Commissioner
Hon. Ingo Hoeppner, Commissioner

MR. MAYOR, WE HAVE A QUORUM

Also Present: Gary Whitehead, City Manager
Traci Alvarez, Assistant City Manager
Jay Rubin, City Attorney
Angela A. Torres, City Clerk-Treasurer

There being a quorum present, the Commission proceeded with the business at hand.

2. SILENT MEDITATION:

Mayor Hechler called for fifteen seconds of silent meditation.

3. PLEDGE OF ALLEGIANCE:

Mayor Hechler called for Commissioner Hoeppner to lead the Pledge of Allegiance.

4. APPROVAL OF AGENDA:

Mayor Pro-Tem Forrister moved to approve the agenda with the removal of item D1 as it is not ready at this time. It will be brought back at the November 19th meeting. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

5. COMMISSION COMMENTS

Mayor Hechler: Copper Flats Mine I called Steven Crosby earlier today, I believe he's the vice president of operations. They're still going through the permitting process with the state. There is some opposition, but not as much as there was before, so they're moving forward. For instance, I think I can say this, the Ladder Ranch will no longer oppose the mine coming in, EBID is opposed, and they'll probably continue to be opposed, that's their history, and we understand that everybody has to look out for themselves. The company itself is going private, instead of publicly traded, which has opened the door to a lot more investors. Obviously, with the price of copper and precious minerals nowadays, you can see why the private sector is ready to invest and doing so. Mr. Crosby seems very optimistic that the construction will start mid next year, which is a lot quicker than we thought. They've solved the water issue, evidently. I know they're going to dry stack, but they needed a couple hundred-acre feet more than what they had, but I think they've solved that problem. I didn't get into the nuts and bolts of what they did to solve those problems. However, I did invite him to speak to our Commission, and I think we will wait until right after the 1st of the year, mainly because I'm hoping we reach the next milestone and he has some good news for us, or he has news for us. If that's the case, I'll give a call Commissioner Fahl. So that's just kind of in a nutshell of what's going on. Things are moving pretty fast in that regard.

Commissioner Fahl: Thank you for checking. It was concerning when they were updating and having problems with the water lines, I'd hoped they would stay on schedule, so it sounds good.

6. STAFF COMMENTS

City Manager Whitehead: First, just to remind everybody and just to talk a little bit, we've had a tough challenge with water leaks. We get it, we're trying to get a process, it works for a minute and then it doesn't, we're kind of lucky because they're really small leaks but we did a mathematical assessment, and even these small leaks, they're a big problem. If you drive around, you can see we're marking them, we're trying to get them located. The vac truck has been down, so we don't have a vac truck, so it's just a challenge. The crew's working hard, really proud of the team. But just to let you know, it doesn't go a day without us having a conversation about where we are with leaks and how we can fix them. We're definitely not ignoring them, they're just winning right now. I just want to keep that fresh. Just a couple of things, we are paying attention to

Facebook when we get relevant information. I would point out that we had a citizen concerned about the lower end of Veater Street, we did a lot of recon and found out that that particular road was our road, we have done a complete repair/restoration on that road, you should drive down and take a look at it. The road crews and Buster did a fabulous job. We've redirected it to channel the water, so the water should flow clearly to our drainage. We had a drainage in that area, we had an easement to clean, they have fixed all of it. Really good repair, and I'm really proud of the team for recognizing good information on Facebook that led us to fixing it. There was another one about the golf course and the weeds, we've mowed those down, and again, we'll try to do a better job on the streets. Just a lot of moving pieces, but good request for assistance, we're paying attention and trying to be responsive.

C. CONSENT CALENDAR:

1. **1st Quarter Subrecipient Reports**
2. **Purchase report of items between \$20,000 and \$60,000**

Commissioner Fahl moved to approve the Consent Calendar as submitted. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

D. PUBLIC HEARINGS (5 Minute Rule Applies)

1. **Public Hearing/Discussion/Action: Public hearing and final Adoption of Ordinance No. 772 G.O. Bond.**

Item was tabled until the November 19th meeting.

E. ORDINANCES/RESOLUTIONS/ZONING:

1. **Discussion/Action: Resolution No. 20 25/26 Budget Adjustment Request.**

City Manager Whitehead: In your packet today, you'll see a budget adjustment resolution for \$26,000. These are capital outlay funds to SJOA, so this would be the addition of those revenues into the budget and then setting them up for expenditure. These funds will be going to renovate their refrigeration system. Truly for our budget, just an in and an out, and adding them to our budget for DFA.

Commissioner Mitchell moved to approve Resolution No. 20 25/26 Budget Adjustment Request. Commissioner Fahl seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: Resolution No. 21 25/26 Sale of Surplus Property to be sold at the November 22, 2025, Willard Hall Auction.

City Clerk Torres: In your packet, we have two side loaders and some poles that we want to sell in the November 22nd Willard Hall Auction. On May 14th, you approved a bunch of items to go up for sale at the JJ Kane Auction, six of those items did not sell, so we're also going to add those to the Willard Hall Auction. It's not listed here because it's already been approved, but we are going to try to get rid of those.

Mayor Pro-Tem Forrister: Do we remember what they are?

City Clerk Torres: I'll list them right now, and I'll also have it in the advertisement, and then Carrie will have it online as well. I will also get pictures, so that will help everybody. We have a 2011 Ford F250, a 2011 Ford Ranger, 2001 Ford Crew Cab 4x4, 2006 GMC Truck, and two 2003 Firetrucks.

Mayor Pro-Tem Forrister: I don't know about getting rid of a fire.

Mayor Hechler: Sounds like yard art to me.

City Clerk Torres: Well, Willard said he can get rid of it.

Mayor Pro-Tem Forrister: Willard says it, I believe it.

Commissioner Fahl: The county fire departments didn't want them?

City Clerk Torres: No. We tried to donate them, we've tried everything.

City Attorney Rubin: I'll just mention, the resolution is word for word from the state statute, calls for a publication.

Mayor Pro-Tem Forrister moved to approve Resolution No. 21 25/26 Sale of Surplus Property to be sold at the November 22, 2025, Willard Hall Auction. Commissioner Hoeppe seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

F. NEW BUSINESS:

1. Discussion/Action: Memorandum of Understanding between the City of Truth or Consequences and the Village of Williamsburg for road maintenance.

City Manager Whitehead: In front of you is a Memorandum of Understanding. For years, the City of Truth or Consequences has served in support of Williamsburg in multiple areas: road improvements, we provide water, we also process their wastewater. They handle the collection system, but the water system is ours. We also provide solid waste

through our trucks, and animal control. Off and on throughout the years, we've either been the Police Department for them or not, currently the Sheriff is. For me, being a partner with Williamsburg is important to me, I want to make sure, you know we had an understanding when I came on board, this particular agreement was already expired, and then there were just some vague issues on how we handle things, when we should go. If you'll look at this agreement, we've cleaned it up to basically say, "The city road department would respond when Williamsburg – the mayor or the clerk – contact us." The biggest part of it is taking a look at the inventory costs, so we identified what each item would cost if we needed to do repairs, they wanted to see what the cost of signs would be. So again, in this particular agreement, you could buy a stop sign, it would cost us \$90, that's what they would pay, and then they would pay us \$75 to go install that. Something that we've added to the agreement is in the beginning of the budget process, for the mayor to be able to present to our road department a list of items they want done. They should be able to go say, "Hey we have \$5,000 we want to change these signs, here's a list of what we want to do." And execute a purchase order to us. So, it'll be really clear, so we'll hopefully get that. And furthermore, when they find potholes, and those kinds of things. The agreement was a one-year contract, so it always expired. It's an MOU, it's a government-to-government contract, we don't have certain limitations like we would with a contractor, so what I did is made this contract a four-year, that's pretty standard, even if we were doing it with the private sector, so it's a four-year agreement, we would be able to change the inventory cost annually. So, if we had a price escalator and the signs, we would then just present that, and then just every four years, it would come back for renewal. I cleaned up the language to take the name of the city manager out and the name of the mayor, so each party could sign it. Council Jay noticed that we had listed our staff by name in the inventory, so we'll clean that up. What we'd ask is approval of the agreement, we will clean that up and take out the names, it would just be: supervisor, laborer, and those kinds of things. Again, how this would work is, everything is by the hour, so if they said, "Hey, we need the road repaired." Buster would be able to say, "I'm going to send three guys, the loader, the dump truck, it'll take us two hours, this is what your cost will be." And that's what the mayor really wanted, was just to be able to know what their costs would be, and to be able to direct the work that they wanted done. The road department has reviewed this, Brenden has helped put this together, staff like it, so we would ask for adoption. The mayor of Williamsburg has already approved the agreement.

Mayor Pro-Tem Forrister: I think this is great, I like that we have it laid out on what's getting paid where. My only concern is our manpower and when we are busy and they need something done right away, how is that going to flow?

City Manager Whitehead: I think it's just going to have to be, we would let our department head handle that. This gives Buster the tools, it's not ambiguous in what he has to do, what he's capable of. He would just have to say, "I can't get there until this time." I think we just let him solve that problem.

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Mayor Pro-Tem Forrister: I just want him to know that it's fine for him to say those things when we have our own stuff going on, and our own potholes to deal with, as opposed to going and dealing with somebody else's.

City Manager Whitehead: Absolutely. I would say, in fairness, the mayor of Williamsburg never indicated that there was a problem of timing. The question always was, "How do we get billed for this?" and then the bill might have come in and it was really high, and there was a question of, "Well how did that happen?" so hopefully we don't have that problem, but Buster is fully capable of managing the staff and getting them out there.

Mayor Pro-Tem Forrister: Right, and I know that we currently provide those services anyway.

Mayor Hechler: Manager Whitehead, at what level is the final decision made of whether we will provide this service or not? Is it the department head or is it your level?

City Manager Whitehead: It's at the department head level. At this point, I call Buster out by name as our department head, they would just, Amanda actually, the clerk, would be able to contact Buster and say, "Hey, here's a list of the signs." Or "There's a pothole." Or "There's a pile of some flooding cane, could you bring a loader?" so that's where it would happen, it would happen between the staff.

Mayor Hechler: Will they agree on the cost before the action is taken, or is that something that we find afterwards?

City Manager Whitehead: It's going to be field afterwards in some cases, but again, with the signs, the mayor and clerk could take a look at this and budget, and say, "We want to replace ten signs at \$75, and these are the signs, and here's the cost of those signs." So, they are going to know what their costs are upfront. Let's say we have a flooding issue, and the street is full of dirt, and we have to go send a loader and a dump truck, that is just going to be the time and material, but they will know what the per-hour cost is, if that makes any sense.

Mayor Hechler: That makes sense.

City Manager Whitehead: And I would protect the Village, you know, we wouldn't send the whole road crew, we aren't going to bill for everybody that's on there. It should be a couple of staff, this piece of equipment, that piece of equipment.

Mayor Hechler: Sometimes you incur other issues, for instance, you could break a water line, or you find there's bedrock where you're digging instead of something else, and all of a sudden, that \$200 fix is a \$700 or \$800 fix. What's the contingency for that, or is there one?

City Manager Whitehead: Well in a water line leak, it would be kind of a different situation, because we own the water line. So, if a water line breaks, currently we have

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two there and we fixed one last night, that's on us. We have to dig and get to it, we have to cover it, we have to patch it. So that's not on them.

Mayor Hechler: But there will be that level of communication if you go and say, "Hey it's going to cost a little bit more because we ran into this or that."

City Manager Whitehead: I would think so.

Mayor Hechler: I remember being involved in this contract before, and there were some billing issues in the past that we had to get past, so I wanted to make sure that it was a clear path.

City Manager Whitehead: My vision is that by putting these numbers clearly in the contract that there will be some practical application to it. I think what's happened in the past, what I've heard is, "We thought they were there two hours, and then we got a bill for \$10,000." I'm just making that up, but it didn't seem like that was fair, and I wasn't here, so I don't know, I just wanted to fix it. I have to hope that actually having these numbers, it should balance itself out where it's pretty clear. And they can argue over an hour, right now they're arguing over a unit. "Were you really there for five hours, if you billed me for five hours?" "Were there really ten people there? When we drove by, there were two people." I think they could discuss that.

Mayor Hechler: I think some of that was the rhetoric in the past, and I'm hopeful we're past all that.

City Manager Whitehead: I think so. My intention while I'm here is to have a good relationship with Williamsburg and be a good partner. Their citizens depend on us and we should take care of them.

Mayor Hechler: I agree 100%.

Commissioner Fahl: It's just good to have it all laid out right there, so there's no surprises. Thank you for doing that.

Commissioner Hoeppner moved to approve Memorandum of Understanding between the City of Truth or Consequences and the Village of Williamsburg for road maintenance with the amendment of the removal of names from the department staff. Commissioner Mitchell seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

2. Discussion/Action: NM Capital Outlay Grant Agreement A25-J2035 Aging and Long-Term Services Department.

Assistant City Manager Alvarez: This is the capital outlay grant agreement for the Ken James Senior Center; this is for \$26,000 for them to purchase the walk-in freezers and refrigerators. We're the fiscal agents, it's 100% grant, no match required, nothing required on the city's side, front the money up, and submit for reimbursement.

Mayor Hechler: Thank you, that's pretty cut and dry.

Mayor Pro-Tem Forrister moved to approve NM Capital Outlay Grant Agreement A25-J2035 Aging and Long-Term Services Department. Commissioner Hoeppner seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

**3. Discussion/Action: Approval of Purchase Requisitions over \$60,000.
a. ITB #2025-09-007 Shovel Ready Project 1-Notice of Award- J & H Services Inc.**

Assistant City Manager Alvarez: We are finally ready to start one of our large water projects. A really quick background – this is our shovel-ready water project, so it's all the various projects that were designed other funding sources, but we didn't have enough funding to cover it, so we went out for shovel-ready, we got the \$4.8 million from Colonius, and the \$4.4 million in capital outlay, the project has been designed and it's gone out to bid, we had four responsive bidders. The lowest bidder was J&H Services for a total contract price of \$5,765,435.12. We are requesting the Commission to accept the notice of award, award the contract to J&H Services, and authorize the City Manager to execute the project documents that are applicable so we can proceed with the project. That's going to include our extra water tank over there at Cook Street, as well as almost 17,000 linear feet of pipeline going in the ground.

Commissioner Fahl: This contract, they are allowed 370 days to complete that, and that seems like an excessively long amount of time. Why do they think, or why do we think it's going to take that long?

Assistant City Manager Alvarez: Some of the lead time, even just for the water tank itself, I'm sure there's an excessive lead time on the water tank and 17,000 feet of water line throughout the city is a lot of water line to put in the ground, as well.

Commissioner Fahl: Over a year is a long time too. So, I was concerned about that.

City Manager Whitehead: Let me try to answer, because I didn't ask that specific question, I didn't get too much, what I've been concerned about is what the pot of money is, and how well the engineers estimate, because if you think back in time, that's

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been a problem. The engineer's estimate to do this job was \$6.5 million, or \$6.3 million. The bids came in right on \$6.3 million, actually the lowest bid is \$800,000 below. We have \$1.8 million in surplus on this project. I'm going to trust the engineer, as I said when I came on, I understood that Wilson & Company, Mark Nassey, has a good understanding of our water system, he really does, and I think his estimate is probably based on some calculation of that many linear feet of line for the number of days that would happen. It does seem like a long time, but I think they'll probably use all of it.

Commissioner Fahl: Okay.

City Manager Whitehead: I feel like I'm just advocating for the engineer's estimate is that, and he's been pretty spot-on and it feels pretty good. These would be his numbers. This would be what was estimated within the contract bid. That's what they bid on, based on that, and the number of days they had to complete the project.

Commissioner Fahl: Okay, question two was about the selection of the contractor. I know invitation, was it RFP or invitation to bid?

Assistant City Manager Alvarez: Invitation to bid, it's based on low bid.

Commissioner Fahl: So that's what I had thought, but my concern, just for awareness, based on some problems that the county just recently experienced, did they provide references on how well they get things done on time? Because we don't want to be caught like the county was.

Assistant City Manager Alvarez: Our engineer did reach out for references as well, and they came back with great references, with some other municipalities that they've done work with, as well as another engineer that they worked for with the municipalities, so they did have favorable references.

Commissioner Fahl: Good. Yeah, invitation to bid is a good way, but sometimes not depending on how the results end up.

Assistant City Manager Alvarez: It is sometimes dictated by our funding sources.

Commissioner Fahl: It's just that you never know. One other thing I think would be helpful for me, I don't know about the other Commissioners, and also for the public, at some point, Traci, you've probably done this in the past, but for this project, can we post on our website a map of where all these are going?

Assistant City Manager Alvarez: It's actually all posted on our city website under [city blueprint](#), under water projects, there's [shovel ready](#), it gives a really good description of what the project is, and if you scroll down, Carrie has done an amazing job putting maps. You click on the map and it shows each area.

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Commissioner Fahl: I think that'll be good for everyone. And I'll look on there, so I know when people ask me.

Mayor Pro-Tem Forrister: And she'll push that out, probably the link on Facebook, just so people can be aware of it? Put an ad on social media so that the public will be aware of where that construction is happening.

Assistant City Manager Alvarez: Yeah, this will definitely be on social media. Carrie will be back tomorrow and I think she'll be updating.

Commissioner Fahl: That'd be great.

Assistant City Manager Alvarez: Pursuant to the Commission approving.

City Manager Whitehead: I would also add, I'll push one step further, we will make a point to notify every resident of every street.

Mayor Pro-Tem Forrister: That would be nice.

City Manager Whitehead: We've done that on Foch street, we've walked the street, we have one more set for tomorrow where we knock one very door, I don't know that we'll get to that level, but we should be able to send a letter to everybody that's on that street that says what's happening, the time frame, and where they can find information on our website. We will make sure that we're doing what we can, we hear you on that. We need to do a better job.

Commissioner Fahl: Awesome. Okay those were my questions.

Mayor Pro-Tem Forrister: Mine was kind of the same as Commissioner Fahl's, just concerning the company. I was wondering if they had references because the other one that came in was not so far off from them, and it is a company we all well know around here. They know our water lines, our citizens, and we know they do good work for us, so that was just my concern. Would it be beneficial to maybe spend a little bit more money and get somebody that is well known here that also knows our water lines and has worked on them as well. But if the other company has been vetted and they're going to come, I just don't want to get caught in the situation that we're in with the county right now.

Assistant City Manager Alvarez: Under our funding sources, we don't have as much of a choice. We'd have to have a very good reason not to award the lowest bidder.

Commissioner Fahl: And the reason would be if they didn't have good references.

Mayor Pro-Tem Forrister: Right, that was my concern. So, if they're vetted, then let's roll.

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Assistant City Manager Alvarez: The good thing is, one of the things I updated to Our Utility Board on Monday was, given the government shutdown, we are waiting on government shutdown for USDA, but we're getting ready time-wise, we're going to be going out for WSPI-1 and WSPI-2 around the same time, that's going to be around \$40 million – well a little bit less because you have engineering in there – but roughly \$40 million that we've been awarded that's been engineered, designed, and going to be going in the ground. So, we have two more very large projects that'll be going out for bid, that's lot for one contractor to have that much manpower.

Mayor Pro-Tem Forrister: Very true.

Mayor Hechler: You answered my question, Gary, about the engineering bid. It's very refreshing that the engineering bid actually comes up a little bit higher than what our actual bids are, it hasn't been that way in the past, they'd be we're in a trend, I'm hoping. Especially when it comes to future projects, so I'll have my fingers crossed. Good job, I'm looking forward to getting this done.

City Manager Whitehead: And I would just comment that the engineer who did the review of all of them said that everybody came back good. There are four good, competitive bids. Smithco and this company, I get that we know both of them, but they were close enough to each other that it gives me a little comfort, that this is a good bid. Smithco would have been hungry to get this job, they would have bid it as close to the vest as they could, so for J&H to beat them a little bit and be that competitive. The outlier put a big number on. So, I feel really good, and the other projects are coming in where the engineer's estimate is a little bit below the funding we have, so that feels really good too. Maybe costs are getting in line, and products are available.

Mayor Pro-Tem Forrister: Where is J&H out of?

City Manager Whitehead: Albuquerque, I think.

Commissioner Fahl moved to approve Purchase Requisitions over \$60,000 as presented, accept the notice of award, award the contract, and authorize the city manager to execute applicable documents. Mayor Pro-Tem Forrister seconded the motion. Roll call was taken by the Clerk-Treasurer. Motion carried unanimously.

I. ADJOURNMENT:

Mayor Hechler adjourned the meeting at 4:30 p.m.

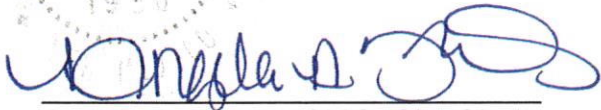
Passed and Approved this 19th day of November, 2025.

CITY COMMISSION OCTOBER 22, 2025 REGULAR MEETING MINUTES



Rolf Hechler, Mayor

ATTEST:



Angela A. Torres, CMC, City Clerk

\$4,400,000

**COLONIAS INFRASTRUCTURE PROJECT FUND
LOAN/GRANT AGREEMENT**

Dated

December 20, 2024

By and Between the

NEW MEXICO FINANCE AUTHORITY,

and the

CITY OF TRUTH OR CONSEQUENCES

**Sierra County, New Mexico,
as Borrower/Grantee.**

**COLONIAS INFRASTRUCTURE PROJECT FUND
LOAN/GRANT AGREEMENT**

THIS LOAN/GRANT AGREEMENT (the "Agreement" or "Loan/Grant Agreement") dated December 20, 2024, is entered into by and between the **NEW MEXICO FINANCE AUTHORITY** (the "NMFA" or "Lender/Grantor"), and the **CITY OF TRUTH OR CONSEQUENCES** in Sierra County, New Mexico, (the "Borrower/Grantee").

W I T N E S S E T H:

WHEREAS, the NMFA is a public body politic and corporate, separate and apart from the State of New Mexico (the "State"), constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978, §§ 6-21-1 through 6-21-31, as amended (the "NMFA Act"); and

WHEREAS, the Colonias Infrastructure Act, NMSA 1978, §§ 6-30-1 through 6-30-8, as amended (the "Colonias Infrastructure Act" or the "Act") creates the Colonias Infrastructure Project Fund (the "Fund") in the NMFA, to be administered by the NMFA to originate grants or loans to Qualified Entities for Qualified Projects recommended by the Colonias Infrastructure Board (the "CIB"); and

WHEREAS, the Borrower/Grantee is a Political Subdivision of the State, being a legally and regularly created, established, organized and existing municipality under the general laws of the State and more specifically, the Municipal Code, NMSA 1978, §§ 3-1-1 through 3-66-11, as amended; and

WHEREAS, the Borrower/Grantee is a community that is a Colonia within the meaning of the Act; and

WHEREAS, pursuant to the Act, Board Rules and the Policies, the CIB authorizes the NMFA to make loans/grants to Qualified Entities from the Fund for recommended Qualified Projects; and

WHEREAS, the Borrower/Grantee submitted an application dated March 1, 2024 for the Project; and

WHEREAS, the CIB has determined that the Project is a Qualified Project and that the Borrower/Grantee is a Qualified Entity under the Board Rules; and

WHEREAS, the CIB on May 16, 2024, recommended to the NMFA that the Borrower/Grantee receive financial assistance from the Fund in the form of the Loan/Grant, and the CIB has recommended that the NMFA enter into and administer this Agreement; and

WHEREAS, the NMFA approved the Loan/Grant Amount from the Fund to the Borrower/Grantee on June 27, 2024; and

WHEREAS, the joint utility revenues originally approved on June 27, 2024, as pledged revenues, have since then changed to now be revenues of the Borrower/Grantee received pursuant to the Tax Ordinance as discussed during the NMFA Board meeting on October 31, 2024; and

WHEREAS, the Borrower/Grantee has imposed by the Tax Ordinance a one-eighth of one percent (0.125%) increment of Municipal Infrastructure Gross Receipts Tax on the gross receipts of all persons engaging in business within the Borrower/Grantee which constitutes the Pledged Revenues; and

WHEREAS, the Borrower/Grantee is authorized to impose by ordinance a Municipal Infrastructure Gross Receipts Tax pursuant to NMSA 1978, § 7-19D-9, as amended; and

WHEREAS, pursuant to the Board Rules and the Policies, the Borrower/Grantee will receive ten percent (10%) of its funding as a loan, in order to ensure the long-term solvency of the Fund by providing annual streams of revenue available to fund additional Qualified Projects; and

WHEREAS, the Borrower/Grantee is willing to pledge the Pledged Revenues to the payment of the Loan and Administrative Fee and grant a subordinate lien (but not an exclusive subordinate lien) to the NMFA on the Pledged Revenues on parity with the Parity Subordinate Obligations and subordinate to the lien on the Pledged Revenues of Senior Obligations provided that the lien on the Pledged Revenues of any future loans from the NMFA to the Borrower/Grantee pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended, shall be on a parity with this Loan/Grant; and

WHEREAS, the obligation of the Borrower/Grantee under this Agreement shall constitute a special, limited obligation of the Borrower/Grantee, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Borrower/Grantee or a charge upon the general credit or ad valorem taxing power of the Borrower/Grantee, or the State; and

WHEREAS, the execution, performance, and delivery of this Agreement have been authorized, approved, and directed by the Governing Body pursuant to the Resolution; and

WHEREAS, the execution and performance of this Agreement have been authorized, approved, and directed by all necessary and appropriate action of the CIB and the NMFA and their respective officers.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Agreement including the foregoing recitals, unless the context clearly requires otherwise.

“Agreement Term” means the term of this Agreement as provided under Article III of this Agreement.

“Application” means the Colonias Infrastructure Project Fund Application for Funding dated March 1, 2024, of the Borrower/Grantee and pursuant to which the Borrower/Grantee requested funding for the Project.

“Authorized Officers” means, with respect to the Borrower/Grantee, any one or more of the Mayor, the City Manager and the City Clerk-Treasurer thereof; and with respect to the NMFA, the Chair, Vice-Chair and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the NMFA designated in writing by an Authorized Officer.

“Board Rules” means Review and Selection of Colonias Infrastructure Projects, New Mexico Colonias Infrastructure Board, Sections 2.91.2.1 through 2.91.2.18 NMAC.

“Closing Date” means the date of execution of this Agreement by the Borrower/Grantee and the NMFA.

“Colonia” or “Colonias” means a Colonia as defined in the Act, and more particularly in NMSA 1978, § 6-30-3(C), as amended, and particularly the Colonia of Truth or Consequences.

“Conditions” means (1) all readiness to proceed requirements established for the Loan/Grant by the NMFA and the CIB; (2) all requirements set forth in the Term Sheet; (3) all requirements outlined in Section 2.1(p) and Section 5.1; (4) a determination that the disbursement applied for does not exceed any limitation upon the amount payable for any Eligible Item pursuant to the Act, the Board Rules, and the Policies; and (5) the plans and specifications for the Project have been approved by all entities required by the CIB or the NMFA in their sole discretion to approve such plans and specifications.

“Department of Finance and Administration” or “DFA” means the department of finance and administration of the State.

“Eligible Fiscal Agent Fees” means fees and costs incurred by a fiscal agent for the administration of Project funds, including the collection and reporting of Project information as required by this Agreement in an amount not exceeding five percent (5%) of the Loan/Grant Amount.

“Eligible Items” means eligible Project costs for which loans/grants may be made pursuant to Title 2, Chapter 91, Part 2 NMAC, the Board Rules and applicable Policies, and includes costs of acquiring and completing the Project, and, without limitation, Eligible Legal Costs, Eligible Fiscal Agent Fees, and Eligible Project Management Fees.

“Eligible Legal Costs” means legal fees and costs for services rendered by legal counsel on behalf of the Borrower/Grantee for transaction of the Project and those directly associated with the Qualified Project in an amount not exceeding ten percent (10%) of the Loan/Grant Amount, but does not include adjudication services.

“Eligible Project Management Fees” means the fees and costs associated with the planning, implementation and technical oversight of the project management costs for services rendered to the Borrower/Grantee for the transaction of the Project and those directly associated with the Project in an amount up to ten percent (10%) of the Loan/Grant Amount.

“Event of Default” means one or more events of default as defined in Section 9.1 of this Agreement.

“Final Debt Service Schedule” means the schedule of Loan Payments due on this Agreement following the Final Requisition, as determined on the basis of the Loan Amount.

“Final Requisition” means the final requisition of moneys to be submitted by the Borrower/Grantee, which shall be submitted by the Borrower/Grantee on or before the expiration of the Interim Period as provided in Section 4.4 of this Agreement.

“Fiscal Year” means the period commencing on July 1 of each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Borrower/Grantee as its fiscal year.

“Force Majeure” means acts of God and natural disasters; strikes or labor disputes; war, civil strife or other violence; an order of any kind of the Government of the United States or of the State or civil or military authority or any court of competent jurisdiction; or any other act or condition that was beyond the reasonable control of, without fault or negligence of, or not reasonably foreseeable by the party claiming the Force Majeure event; except for (i) general economic conditions; or (ii) an inability of a party claiming the Force Majeure event to pay any debts when due.

“Generally Accepted Accounting Principles” means the officially established accounting principles applicable to the Borrower/Grantee consisting of the statements, determinations and other official pronouncements of the Government Accounting Standards Board, Financial Accounting Standards Board, Federal Accounting Standards Board or other principle-setting body acceptable to the NMFA establishing accounting principles applicable to the Borrower/Grantee.

“Governing Body” means the City Commission of the Borrower/Grantee, or any future successor governing body of the Borrower/Grantee.

“Grant” or “Grant Amount” means the amount provided to the Borrower/Grantee as a grant pursuant to this Agreement for the purpose of funding the Project and shall equal 90% of the amount disbursed during the Interim Period not to exceed three million nine hundred sixty thousand dollars (\$3,960,000).

“Hardship Waiver” means a determination by the NMFA pursuant to Section 4.1(a)(ii) herein that the annual principal payment by the Borrower/Grantee should be forgiven because such payment would cause undue hardship for the Borrower/Grantee or the public it serves.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to this entire Agreement and not solely to the particular section or paragraph of this Loan/Grant Agreement in which such word is used.

“Interest Component” means the portion of each Loan Payment paid as interest on this Agreement, if any, as shown on Exhibit “C” hereto.

“Interim Debt Service Schedule” means the anticipated schedule of Loan Payments due on this Agreement following the Final Requisition, assuming disbursement of the entire Loan Amount within twenty-four (24) months of the Closing Date. The Interim Debt Service Schedule is attached hereto as Exhibit “C”.

“Interim Period” means the period no greater than twenty-four (24) months, unless a longer period is approved by the NMFA as provided in Section 4.4 of this Agreement, beginning on the Closing Date, during which the NMFA will disburse moneys to the Borrower/Grantee to pay costs of the Project.

“Loan” or “Loan Amount” means 10% of the amount disbursed to the Borrower/Grantee during the Interim Period for the purpose of funding the Project and shall not equal more than four hundred forty thousand dollars (\$440,000).

“Loan/Grant” or “Loan/Grant Amount” means the combined amount distributed to the Borrower/Grantee during the Interim Period partially as the Grant Amount and partially borrowed by the Borrower/Grantee as the Loan Amount pursuant to this Agreement for the purpose of funding the Project and shall not equal more than four million four hundred thousand dollars (\$4,400,000).

“Loan Payments” means, collectively, the Principal Component and interest, if any, to be paid by the Borrower/Grantee as payment of this Agreement as shown on Exhibit “C” hereto.

“Local Match” means the amount determined pursuant to the Policies to be provided by the Borrower/Grantee which includes the total value of the soft or hard match (each as defined in the Policies) which, in combination with the Loan/Grant Amount and other monies available to the Borrower/Grantee, is sufficient to complete the Project. The Local Match is four hundred forty thousand dollars (\$440,000).

“NMAC” means the New Mexico Administrative Code.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented from time to time.

“Parity Subordinate Obligations” means this Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with this Agreement and subordinate to Senior Obligations, as shown on the Term Sheet.

“Pledged Revenues” means the revenues received by the Borrower/Grantee pursuant to the Tax Ordinance which the Borrower/Grantee pledges to the payment of the Loan Payments pursuant to the Resolution and this Agreement and described in the Term Sheet.

“Policies” means the Colonias Infrastructure Project Fund Project Selection and Management Policies, approved by the CIB.

“Political Subdivision of the State” means a municipality, a county, water and sanitation district, an association organized and existing pursuant to the Sanitary Projects Act, NMSA 1978, § 3-29-1 through § 3-29-21, as amended, or any other entity recognized by statute as a political subdivision of the State.

“Principal Component” means the portion of each Loan Payment paid as principal on this Agreement as shown on Exhibit “C” attached hereto.

“Project” means the project(s) described on the Term Sheet.

“Project Account” means the book account, if any, established by the NMFA in the name of the Borrower/Grantee for purposes of tracking expenditure of the Loan/Grant Amount by the Borrower/Grantee to pay for the costs of the Project, which shall be kept separate and apart from all other accounts of the NMFA.

“Qualified Entity” means a county, municipality, or other entity recognized as a Political Subdivision of the State pursuant to NMSA 1978, § 6-30-3(F), as amended.

“Qualified Project” means a capital outlay project recommended by the CIB to the NMFA for financial assistance that is primarily intended to develop Colonias infrastructure. A Qualified Project may include a water system, a wastewater system, solid waste disposal facilities, flood and drainage control, roads or housing infrastructure pursuant to NMSA 1978, § 6-30-3(G), as amended, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies.

“Resolution” means the Borrower/Grantee Resolution No. 21 24/25 adopted by the Governing Body on November 13, 2024, authorizing the acceptance of the Loan/Grant, approving this Agreement and pledging the Pledged Revenues to the payment of the Loan Payments as shown on the Term Sheet.

“Senior Obligations” means the senior obligations now outstanding or hereafter issued with a superior lien on the Pledged Revenues to Parity Subordinate Obligations, and meeting the requirements of this Agreement applicable to the issuance of Senior Obligations, including any such obligations shown on the Term Sheet.

“State” means the State of New Mexico.

“Tax Ordinance” means the Borrower/Grantee’s Ordinance No. 389 adopted on March 26, 1992, with and effective date of July 1, 1992, as amended by Ordinance No. 472 adopted on March 13, 2000, with an effective date of July 1, 2000, imposing a Municipal Infrastructure Gross Receipts Tax of one-eighth of one percent (0.125%) which Municipal Infrastructure Gross Receipts Tax has been de-earmarked and is now enforceable under NMSA 1978, § 7-19D-9, as amended, which the Borrower/Grantee pledges to the payment of the Loan Payments pursuant to this Agreement and the Resolution, as described in the Term Sheet.

“Term Sheet” means Exhibit “A” attached to this Agreement.

“Useful Life” means the period during which the Project is expected to be usable for the purpose for which it was acquired and constructed, which is twenty (20) years.

ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE BORROWER/GRANTEE

Section 2.1 Representations, Covenants and Warranties of the Borrower/Grantee: The Borrower/Grantee represents, covenants and warrants for the benefit of the NMFA as follows:

(a) Binding Nature of Covenants: Enforceability. All representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee contained in this Agreement shall be deemed to be the representations, covenants, stipulations, obligations and agreements of the Borrower/Grantee to the full extent authorized or permitted by law, and such representations, covenants, stipulations, obligations and agreements shall be binding upon the Borrower/Grantee and its successors and enforceable in accordance with their terms, and upon any board or body to which any powers or duties affecting such representations, covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law.

(b) Authorization of Agreement. The Borrower/Grantee is a Qualified Entity as defined in the Act and the Board Rules. Pursuant to the laws of the State and in particular, the laws governing its creation and existence, as amended and supplemented from time to time, the Borrower/Grantee is authorized to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Borrower/Grantee has duly authorized and approved its acceptance of the Loan/Grant and the execution and delivery of this Agreement and the other documents related to the transaction described in this Agreement, and this Agreement and the other documents related to the transaction to which the Borrower/Grantee is a party constitute legal, valid and binding special obligations of the Borrower/Grantee enforceable against the Borrower/Grantee in accordance with their respective terms.

(c) Necessity of Project. The completion and operation of the Project under the terms and Conditions provided in this Agreement are necessary, convenient, and in furtherance of the governmental purposes of the Borrower/Grantee and are in the best interest of the Borrower/Grantee, the Colonia and the public the Borrower/Grantee serves.

(d) Useful Life. The Agreement Term is not greater than the Useful Life of the Project, and in any event shall not exceed twenty (20) years.

(e) Nature and Use of Agreement Proceeds. The Borrower/Grantee acknowledges that the proceeds of the Loan/Grant Amount shall be distributed pro rata as the Loan Amount and Grant Amount. The Borrower/Grantee shall apply the proceeds of the Loan/Grant solely to Eligible Items that will facilitate the completion of the Project and shall not use the Loan/Grant proceeds for any other purpose. The Loan/Grant Amount, together with the Local Match and other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project in its entirety.

(f) Lien. The Loan Payments constitute an irrevocable lien on the distribution on the Pledged Revenues, the priority of which is consistent with that shown on the Term Sheet.

(g) Payment of Loan Amount. The Borrower/Grantee shall promptly pay the Loan Payments as provided in this Agreement, except when a Hardship Waiver is obtained pursuant to Section 4.1(a)(ii) of this Agreement. The Loan Payments shall be payable solely from Pledged Revenues and nothing in this Agreement shall be construed as obligating the Borrower/Grantee to make the Loan Payments from any general or other fund of the Borrower/Grantee other than the Pledged Revenues; however, nothing in this Agreement shall be construed as prohibiting the Borrower/Grantee in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(h) No Breach or Default Caused by Agreement. Neither the execution and delivery of this Agreement and the other documents related to the transaction, nor the fulfillment of or compliance with the terms and Conditions in this Agreement and the other documents related to the transaction, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Borrower/Grantee is a party or by which the Borrower/Grantee is bound, or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Borrower/Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(i) Irrevocable Enactments. While this Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for payment of this Agreement, including the Resolution, shall be irrevocable until the Project has been fully acquired and completed, and the Loan Amount, including all principal and interest that has been repaid, or provision made for payment thereof, shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Agreement in a manner not permitted or contemplated by the terms hereof. The Borrower/Grantee shall not impair the rights of the NMFA or of any holders of bonds or other obligations payable from the Pledged Revenues while this Agreement is outstanding.

(j) No Litigation. To the knowledge of the Borrower/Grantee, no litigation or proceeding is pending or threatened against the Borrower/Grantee or any other person affecting the right of the Borrower/Grantee to execute or deliver this Agreement and the other documents related to the transaction or to comply with its obligations under this Agreement and the other documents related to the transaction.

(k) Agency Approval. Neither the execution and delivery of this Agreement and the other documents related to the transaction by the Borrower/Grantee nor compliance by the Borrower/Grantee with the obligations under this Agreement and the other documents related to the transaction, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(l) No Event of Default. No event has occurred and no condition exists which, with the giving of notice or the passage of time or upon the execution and delivery of this Agreement or the other documents related to the transaction, would constitute an Event of Default on the part of the Borrower/Grantee under this Agreement and the other documents related to the transaction.

(m) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Payments, as and when due, is not needed or budgeted to pay current or future Project-related expenses of the Borrower/Grantee.

(n) Borrower/Grantee's Existence. The Borrower/Grantee will maintain its legal identity and existence so long as this Agreement remains outstanding unless another Political Subdivision of the State, State agency, or other entity by operation of law succeeds to the liabilities, rights and duties of the Borrower/Grantee under this Agreement without adversely affecting to any substantial degree the privileges and rights of the CIB and NMFA.

(o) Budgeting of Pledged Revenues. The Pledged Revenues will be sufficient to make the Loan Payments, as and when due. The Borrower/Grantee will adequately budget for the Loan Payments and other amounts payable by the Borrower/Grantee under this Agreement.

(p) Use of Project; Continuing Covenant. During the Agreement Term, the Borrower/Grantee will at all times use the Project for the benefit of the Borrower/Grantee and the public it serves. The Borrower/Grantee shall not sell, lease, mortgage, pledge, relocate or otherwise dispose of or transfer the Project, or any part of the Project so long as this Loan/Grant Agreement is outstanding ; provided, however, that if the Project is a joint project of the Borrower/Grantee and other Qualified Entities (as defined by the Act), the Borrower/Grantee and the other Qualified Entities may, with the express written approval of the NMFA and not otherwise, enter into an agreement allocating ownership and operational and maintenance responsibilities for the Project during the term of the Agreement. Any such agreement shall provide that the NMFA shall have the power to enforce the terms of this Agreement, without qualification, as to each and every Qualified Entity (as defined by the Act) other than the Borrower/Grantee, owning or operating any portion of the Project during the term of the Agreement. The Borrower/Grantee will operate and maintain the Project, so that it will function properly over its Useful Life.

(q) Expected Coverage Ratio. The Pledged Revenues are reasonably expected to equal or exceed—from the Fiscal Year in which the Closing Date occurs and, on an ongoing basis during each Fiscal Year of the Agreement Term—one hundred percent (100%) of the maximum annual principal and interest due on all outstanding obligations of the Borrower/Grantee payable from the Pledged Revenues.

(r) Right to Inspect. The NMFA shall have the right to inspect at all reasonable times all records, accounts and data relating to the Project and to inspect the Project and all properties comprising the Project, and the Borrower/Grantee shall supply such records, accounts, and data as are requested by the NMFA, within thirty (30) days of receipt of such request, written or oral.

(s) Records and Reporting. The Borrower/Grantee shall maintain financial records in accordance with Generally Accepted Accounting Principles throughout the Agreement Term, and in the event that the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14 does not apply, conduct an audit of the Project's financial records if requested by the CIB or the NMFA and provide any and all other information and access to the Project as requested by the CIB or the NMFA.

(t) Acquisition and Completion. The Borrower/Grantee shall proceed expeditiously to complete the Project and shall commence the Project in a commercially reasonable timeframe following the Closing Date. Further, the Borrower/Grantee hereby agrees that in order to effectuate the purposes of this Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire, complete, operate and maintain the Project lawfully and efficiently in accord with all applicable laws, ordinances, resolutions and regulations relating to the acquisition, operation, maintenance and completion of the Project and use of the Loan/Grant proceeds. The Project shall be designed so as to incorporate the available technologies and operational design for water use efficiency. The plans and specifications shall be approved by all entities required by the CIB or NMFA in their sole discretion to approve such plans and specifications prior to the disbursement of any part of the Loan/Grant Amount for construction of the Project, and the Project shall be constructed and completed substantially in accordance with the approved plans and specifications. No Loan/Grant funds shall be used for items not constituting Eligible Items.

(u) Use of Loan/Grant Proceeds for Construction; Other Qualified Entities The Borrower/Grantee shall operate and maintain the Project in good operating condition and repair at all times during the Useful Life of the Project, so that the Project will function properly over the Useful Life of the Project; provided, that if any portion of the Project will be constructed, installed, located, completed or extended on real property owned by a Qualified Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may, prior to any use of the Loan/Grant funds for the Project on such real property, obtain the written agreement of such other Qualified Entity to perform these obligations with respect to such real property (and the portion of the Project to be constructed, installed, located, completed or extended on such real property), which written agreement shall be subject to approval by the NMFA and shall include an express statement by such other Qualified Entity that the NMFA is a third party beneficiary of such written agreement.

(v) Local Match. The Local Match is legally available for the Project, has been applied or set aside by the Borrower/Grantee solely for the purposes of the Project and sufficient evidence of the Local Match, as provided by the Borrower/Grantee's Resolution No. 33 23/24 adopted on February 14, 2024, has been provided and will be continued to be provided as part of the Borrower/Grantee's quarterly reporting as outlined in Section 7.1 and as otherwise requested by the NMFA.

(w) Audit Requirement. During the Agreement Term the Borrower/Grantee shall comply with the requirements of the State Audit Act, NMSA 1978, §§ 12-6-1 through 12-6-14, as amended, and upon request, provide the NMFA with a copy of any review or audit, report of agreed upon procedures, or any other document prepared pursuant to or required by the State Audit Act.

(x) Executive Order 2013-006 Requirements. The Borrower/Grantee has and will meet the requirements of Executive Order 2013-006 prior to the first disbursement of any portion of the Loan/Grant Amount, the Conditions and the readiness to proceed requirements established for the Loan/Grant by the NMFA and the CIB.

(y) Additional Debt. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenues that is senior to or on parity with this Agreement, the Borrower/Grantee will seek the written consent of the NMFA, which consent will not be unreasonably withheld. Prior to entering into additional indebtedness secured by a lien on the Pledged Revenue subordinate to this Agreement or a lien on any revenues of the Borrower/Grantee other than the Pledged Revenues, the Borrower/Grantee will notify the NMFA in writing of such indebtedness.

(z) Other Liens. Other than as provided in the Term Sheet, there are no liens or encumbrances of any nature, whatsoever, on or against the Pledged Revenues.

ARTICLE III AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: (a) submission and acceptance of a completed Form of Certificate of Completion, Exhibit "D", and repayment of the Loan Amount and interest or (b) the exercise by the NMFA to terminate the Agreement pursuant to an Event of Default as outlined in Section IX of this Agreement.

ARTICLE IV LOAN/GRANT TO THE BORROWER/GRANTEE; INVESTMENT OF MONEYS

Section 4.1 Loan and Grant to the Borrower/Grantee.

(a) Loan to the Borrower/Grantee. The NMFA hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from and agrees to pay to the order of the NMFA, an amount equal to the Loan Amount, with the principal amount of the Loan Amount being payable as provided by Article VI and Exhibit "C" of this Agreement. The Loan Amount shall be pre-payable by the Borrower/Grantee at the conclusion of the Interim Period without penalty.

(i) Subordinate Nature of Loan Amount Obligation. The obligation of the Borrower/Grantee to make the Loan Payments shall be subordinate to all Senior Obligations secured by the Pledged Revenues and shall be on parity with any Parity Subordinate Obligations existing on the Closing Date and, further, that may in the future be secured by the Pledged Revenues. The obligation of the Borrower/Grantee to make the Loan Payments shall be on parity with any other obligation, present or future, of the Borrower/Grantee to repay a loan provided by the NMFA pursuant to the Act or the Water Project Finance Act, NMSA 1978, §§ 72-4A-1 through 72-4A-11, as amended.

(ii) Hardship Waivers of Payment. Each year while any portion of the Loan Amount remains outstanding, if a Borrower/Grantee has encountered an unforeseeable hardship, the Borrower/Grantee may apply in writing on or before April 1st to the NMFA for forgiveness of the annual Loan Payment coming due on June 1 of the same year. The Borrower/Grantee shall submit its application to the NMFA for a determination by the NMFA, in cooperation with DFA, and shall submit sufficient documentation of the existence of the

unforeseeable hardship as is reasonably required by the NMFA, in cooperation with DFA, to make a determination. The Borrower/Grantee shall promptly respond to additional requests for information from the NMFA or DFA. Such application for a Hardship Waiver shall be executed by the Authorized Officers of the Borrower/Grantee. The NMFA shall communicate the decision to the Borrower/Grantee in writing. In the event of a determination of unforeseeable hardship, the Loan Payment otherwise due on June 1 of that year shall be forgiven. If no unforeseeable hardship is found to exist, the Loan Payment shall remain outstanding and due and payable in accordance with the terms of this Agreement.

(iii) Constitutional and Statutory Debt Limitations. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the CIB, the NMFA, the State or the Borrower/Grantee within the meaning of any constitutional or statutory debt limitation.

(b) Grant to the Borrower/Grantee. The CIB has granted to the Borrower/Grantee and the Borrower/Grantee hereby accepts from the NMFA and the CIB an amount equal to the Grant Amount subject to the terms of this Agreement.

(c) Project Account. The NMFA may establish and maintain the Project Account as a book account only, on behalf of the Borrower/Grantee, which account shall be kept separate and apart from all other accounts of the NMFA.

Section 4.2 Investment of Borrower/Grantee's Accounts. Money on deposit in the Borrower/Grantee's accounts created hereunder and held by the NMFA may be invested by the NMFA for the credit of the Fund.

Section 4.3 Loan/Grant Amount Does Not Exceed Total Cost. The sum of the Grant Amount, the Loan Amount, and the Local Match (and as set forth on the Term Sheet) does not exceed the cost of the Project, which, along with other moneys reasonably expected to be available to the Borrower/Grantee, is sufficient to complete the Project.

Section 4.4 Final Requisition. The Final Requisition shall be submitted by the Borrower/Grantee within the Interim Period. The Interim Period may be extended only as approved in writing by an Authorized Officer of the NMFA, based on the Borrower/Grantee's demonstration, to the reasonable satisfaction of the Authorized Officer of the NMFA, that unanticipated circumstances resulted in delaying the acquisition and completion of the Project, and submission of the Borrower/Grantee's Final Requisition.

ARTICLE V

LOAN/GRANT AMOUNT DISBURSEMENT CONDITIONS

Section 5.1 Conditions Precedent to Disbursement of Loan/Grant Amount. Prior to the payment of any requisition of the Loan/Grant Amount or any portion thereof by the NMFA from the Fund, the following conditions shall be satisfied:

(a) The NMFA shall have determined that the Borrower/Grantee has met the Conditions established for the Loan/Grant; and

(b) Prior to disbursement of any portion of the Loan/Grant Amount for installation or construction, the plans and specifications for the Project shall have been approved by all entities required by the CIB or the NMFA in their sole discretion to approve such plans and specifications and the Borrower/Grantee shall have provided written assurance addressed to the NMFA and signed by an attorney (or shall have provided a title insurance policy) that the Borrower/Grantee has proper title to, easements, rights of way, or permits on the real property upon or through which the Project is to be [designed] installed, constructed, located, completed or extended; and

(c) The Borrower/Grantee shall be in compliance with the provisions of this Agreement; and

(d) No Event of Default has occurred; and

(e) The Borrower/Grantee shall have provided any other information requested by the NMFA in its absolute discretion including documentation sufficient to make a determination whether any requested disbursement is for payment of Eligible Items and is fully consistent with the Act, the Board Rules, and the Policies, as applicable.

Section 5.2 Accounting for Amounts Credited to the Project Account. So long as Section 5.1 has been complied with and all Conditions to the disbursement of the Loan/Grant Amount have been satisfied (including approval of all plans and specifications), upon receipt by the NMFA of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Borrower/Grantee, supported by certification by the Borrower/Grantee's project architect, engineer, or such other authorized representative of the Borrower/Grantee that the amount of the disbursement request represents the progress of design, installation, construction, acquisition or other Project-related activities accomplished as of the date of the disbursement request, the NMFA shall seek funds sufficient to satisfy the request and, upon receipt of those funds disburse from the Fund, amounts which together are sufficient to pay the requisition in full or that portion approved by the NMFA in its sole discretion. The certification provided pursuant to this Section 5.2 in support of the requisition must be acceptable in form and substance to the NMFA. The Borrower/Grantee shall provide such records or access to the Project as the NMFA, and, at its request, the CIB, in the discretion of each, may request in connection with the approval of the Borrower/Grantee's requisition requests made hereunder.

Section 5.3 Acknowledgment and Non-liability for Funding Interruption. The Borrower/Grantee hereby acknowledges that the NMFA and the CIB may be required to seek or request funds to satisfy the request outlined in Section 5.2 from an agency, instrumentality or other Political Subdivision of the State and that the NMFA and the CIB may have no control or authority over those entities. The Borrower/Grantee hereby agrees to waive on behalf of itself and indemnify and hold the NMFA and the CIB harmless from any and all third party claims, liability or damage that may or could be caused as a result of a delay or denial of funds related to or arising from the procedure described above or any other mechanism necessary or required to request, secure or process funds.

Section 5.4 No Disbursement for Prior Expenditures Except upon Approval. No disbursement shall be made from the Fund, of the Loan/Grant Amount, or any portion thereof,

without the approval of the NMFA to reimburse any expenditure made prior to the approval date of the award by the NMFA Board.

Section 5.5 Completion of Disbursement of Loan/Grant Funds. Upon completion of the Project an Authorized Officer of the Borrower/Grantee shall deliver a certificate to the NMFA, substantially in the form of Exhibit "E" attached hereto, stating that, to his or her knowledge, that the Project has been completed. No portion of the Loan/Grant Amount shall be disbursed after the expiration of the Interim Period.

Section 5.6 Application of Project Account Subsequent to Disbursement of Loan/Grant Amount; Termination of Pledge. Upon the first to occur of either (a) completion of the disbursement of the Loan/Grant Amount as signified by delivery of the completion certificate contemplated in Section 5.5 hereof; or (b) the earlier expiration of the time allowed for disbursements of Loan/Grant funds as provided in Section 5.5 hereof, the NMFA shall transfer the amounts remaining on deposit in the Project Account, if any, to such other fund permitted by law. Upon such entry, the pledge of the Project Account, if any, established in this Agreement shall terminate.

ARTICLE VI LOAN PAYMENTS BY THE BORROWER/GRANTEE

Section 6.1 Loan to the Borrower/Grantee; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The NMFA hereby lends to the Borrower/Grantee and the Borrower/Grantee hereby borrows from the NMFA an amount not to exceed the Loan Amount. The Borrower/Grantee promises to pay, but solely from the sources pledged herein, the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided. Subject to any outstanding Senior Obligations and Parity Subordinate Obligations, the Borrower/Grantee does hereby grant a security interest in and a subordinate lien (but not an exclusive subordinate lien) on the Pledged Revenues on parity with the Parity Subordinate Obligations and subordinate to the lien on the Pledged Revenues of the Senior Obligations and does hereby convey, assign and pledge unto the NMFA and unto its successors in trust forever all right, title and interest of the Borrower/Grantee in and to (i) the Pledged Revenues to the extent required to pay the Loan Payments, and other amounts owed by the Borrower/Grantee as herein provided, subject to and subordinate to all Senior Obligations pledges of the Pledged Revenues existing on the Closing Date and, further, that may exist in the future (provided that the pledge of the Pledged Revenues herein shall be on a parity with any other pledge of the Pledged Revenues by the Borrower/Grantee to repay any obligations issued by the NMFA pursuant to the Act or the Water Project Finance Act); (ii) the Loan/Grant Amount including the Project Account; and (iii) all other rights hereinafter granted, for the securing of the Borrower/Grantee's obligations under this Agreement, including payment of the Loan Payments and other amounts owed by the Borrower/Grantee as herein provided, however, that if the Borrower/Grantee, its successors or assigns, shall pay, or cause to be paid, all Loan Payments at the time and in the manner contemplated by this Agreement, and shall pay all other amounts due or to become due under this Agreement in accordance with its terms and provisions then, upon such final payment, this Agreement and the rights created thereby shall terminate; otherwise, this Agreement shall remain in full force and effect.

The schedule of Loan Payments, assuming the disbursal of the entire Loan/Grant Amount within twenty-four (24) months after the Closing Date, identified as the Interim Debt Service Schedule, is attached to this Agreement as Exhibit "C". Within thirty (30) days after the Final Requisition is made, the NMFA shall provide a Final Debt Service Schedule, reflecting the amount of the Loan/Grant Amount actually disbursed to the Borrower/Grantee pursuant to this Agreement. Such Final Debt Service Schedule shall supersede the schedule attached hereto as Exhibit "C".

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Borrower/Grantee and the NMFA acknowledge and agree that the obligations of the Borrower/Grantee hereunder are limited to the Pledged Revenues; and that this Agreement with respect to the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided, and that the Agreement shall constitute a special, limited obligation of the Borrower/Grantee. No provision of this Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Borrower/Grantee or the State within the meaning of any constitutional or statutory debt limitation. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Borrower/Grantee moneys other than the Pledged Revenues, nor shall any provision of this Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Borrower/Grantee moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Borrower/Grantee hereunder, the Pledged Revenues may be utilized by the Borrower/Grantee for any other purposes permitted by law.

Section 6.2 Deposit of Payments of Loan Amount to Colonias Infrastructure Project Fund. All Loan Payments made by the Borrower/Grantee to the NMFA to repay the Loan Amount and interest thereon, if any, shall be deposited into the Colonias Infrastructure Project Fund.

Section 6.3 Manner of Payment. The Loan Amount shall be payable by the Borrower/Grantee to the NMFA in annual installments of principal payable on June 1 after expiration of the Interim Period and continuing through the expiration of the last Loan Payment due as outlined in the Final Debt Service Schedule. All payments of the Borrower/Grantee hereunder shall be paid in lawful money of the United States of America to the NMFA at the address designated in Section 10.1 of this Agreement. The obligation of the Borrower/Grantee to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder. Notwithstanding any dispute between the Borrower/Grantee and the NMFA, any vendor or any other person, the Borrower/Grantee shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Borrower/Grantee assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 6.4 Borrower/Grantee May Budget for Payments. The Borrower/Grantee may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to make the Loan Payments and other amounts owed by the Borrower/Grantee hereunder; provided, however, the Borrower/Grantee has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

Section 6.5 NMFA's Release of Lien and Further Assurances. Upon payment in full of the Loan Amount and other amounts owed by the Borrower/Grantee as herein provided in this Agreement and upon written request from the Borrower/Grantee, the NMFA agrees to execute a release of lien and to give such further assurances as are reasonably necessary to ensure that the NMFA no longer holds or maintains any lien or claim against the Pledged Revenues.

ARTICLE VII ADMINISTRATION

Section 7.1 Borrower/Grantee Reporting to the NMFA. The Borrower/Grantee shall provide the NMFA with a quarterly written report substantially in the form of Exhibit "D" attached hereto, or other report format as designated by the NMFA, and signed by an Authorized Officer of the Borrower/Grantee. The first quarterly report shall be due on March 31, 2025, and subsequent reports shall be due on each March 31, June 30, September 30 and December 31 thereafter until the report date next following final distribution of the Loan/Grant funds. The description of the status of the Project in each quarterly report shall include, among other information, (a) a comparison of actual and anticipated requests for distributions of Loan/Grant funds as of the report date with those anticipated as of the Closing Date, (b) a description of actual and anticipated changes in the cost estimates for the Project as of the report date compared with those anticipated as of the Closing Date, and (c) a description of the percentage of completion of the Project.

Section 7.2 Application of Project Account Subsequent to Disbursement of Loan/Grant Funds. Upon the completion of the Project as signified by delivery of the completion certificate required by Section 5.5 hereof, the NMFA shall determine, by reference to the Project Account, if any, whether any portion of the authorized Loan/Grant Amount remains unexpended. If any of the Loan/Grant Amount remains unexpended, the funds shall be transferred by the NMFA to the appropriate account or fund in accordance with applicable law and the Borrower/Grantee shall have no right to access the funds.

Section 7.3 Further Assurances and Corrective Instruments. The NMFA and the Borrower/Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues and carrying out the intention hereof.

Section 7.4 Representatives of the NMFA or of Borrower/Grantee. Whenever under the provisions hereof the approval of the NMFA or the Borrower/Grantee is required, or the Borrower/Grantee, or the NMFA is required to take some action at the request of any of them, such approval or such request shall be given for the NMFA or for the Borrower/Grantee, by an Authorized Officer of the NMFA or the Borrower/Grantee, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.5 Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Borrower/Grantee is not subject to the New Mexico Procurement Code, shall be selected in

accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Borrower/Grantee.

Section 7.6 Required Contract Provisions. The Borrower/Grantee shall require the following provisions in any contract or subcontract executed in connection with the Project to which the Borrower/Grantee is a party:

(a) There shall be no discrimination against any employee or applicant for employment because of race, color, creed, sex, religion, sexual preference, ancestry or national origin;

(b) Any contractor or subcontractor providing construction services in connection with the Project shall post a performance and payment bond in accordance with the requirements of NMSA 1978, § 13-4-18, as amended; and

(c) Any contractor or subcontractor providing construction services in connection with the Project shall comply with the prevailing wage laws in accordance with the requirements of NMSA 1978, § 13-4-11, as amended.

Section 7.7 Little Miller Act. To the extent NMSA 1978, § 13-4-1 et seq., (the "Little Miller Act") is applicable to the Project, the Borrower/Grantee shall comply with the requirements of the Little Miller Act. If bonding requirements of the Little Miller Act are not applicable to the Project, the Borrower/Grantee will require that the contractor to whom is given any contract for construction appertaining to the Project supply a performance bond or bonds satisfactory to the Borrower/Grantee. Any sum or sums derived from said performance bond or bonds shall be used within six (6) months after such receipt for the completion of said construction, and if not so used within such period, shall be used as authorized by law.

ARTICLE VIII INSURANCE; NON-LIABILITY OF THE NMFA AND CIB

Section 8.1 Insurance. The Borrower/Grantee shall carry general liability insurance or participate in the State's risk-management program and, to the extent allowed by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-30, as amended, shall and hereby agrees to name the NMFA as additional insureds with respect to all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition, completion or implementation of the Project or otherwise during the Agreement Term; provided, that if any portion of the Project will be constructed, located, completed or extended on real property owned by a Qualified Entity (as defined by the Act) other than the Borrower/Grantee, the Borrower/Grantee may obtain the written agreement of such other Qualified Entity to perform these insurance/risk-management program requirements for Borrower/Grantee with respect to such real property (and the portion of the Project to be constructed, located, completed or extended on such real property), which written agreement shall include an express statement by such other Qualified Entity that the NMFA is a third party beneficiary of such written agreement.

Section 8.2 Non-Liability of the NMFA and the CIB.

(a) The NMFA and the CIB shall not be liable in any manner for the Project, Borrower/Grantee's use of the Loan/Grant, the acquisition, implementation, construction, installation, ownership, operation or maintenance of the Project, or any failure to act properly by the Borrower/Grantee or any other owner or operator of the Project.

(b) The NMFA and the CIB shall not be liable for the refusal or failure of any other agency of the State to transfer any portion of the Loan/Grant Amount in its possession, custody and control to the NMFA for disbursement to the Borrower/Grantee, or to honor any request for such transfer or disbursement of the Loan/Grant Amount.

(c) To the extent permitted by law, the Borrower/Grantee shall and hereby agrees to indemnify and save the NMFA and the CIB harmless against and from all claims, by or on behalf of any person, firm, corporation, or other legal entity, arising from the acquisition or operation of the Project during the Agreement Term, from: (i) any act of negligence or other misconduct of the Borrower/Grantee, or breach of any covenant or warranty by the Borrower/Grantee hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the Project in excess of the Loan/Grant Agreement proceeds and interest on the investment thereof. The Borrower/Grantee shall indemnify and save the NMFA and the CIB harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the NMFA or the CIB, shall defend the NMFA or the CIB, as applicable, in any such action or proceeding.

ARTICLE IX EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default Defined. Any one of the following shall be an "Event of Default" under this Agreement:

(a) Failure by the Borrower/Grantee to pay any amount required to be paid under this Agreement on the date on which it is due and payable; or

(b) Failure by the Borrower/Grantee to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower/Grantee by the NMFA, unless the NMFA shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the NMFA but cannot be cured within the applicable thirty (30) day period, the NMFA will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower/Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Borrower/Grantee is unable to carry out the agreements on its part herein contained, the Borrower/Grantee shall not be deemed in default under this paragraph 9.1(b) during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

(c) Any warranty, representation or other statement by or on behalf of the Borrower/Grantee contained in this Agreement or in any instrument furnished in compliance with or in reference to this Agreement is determined to be false or misleading in any material respect in the sole discretion of the NMFA; or

(d) A petition is filed against the Borrower/Grantee under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the NMFA shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(e) The Borrower/Grantee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Borrower/Grantee admits insolvency or bankruptcy or its inability to pay its debt as they become due or is generally not paying its debt as such debt become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Borrower/Grantee for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the NMFA shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests; or

(g) Default by the Borrower/Grantee in performance or observance of any covenant contained in any other loan agreement, document or instrument of any type whatsoever evidencing or securing obligations of the Borrower/Grantee to the NMFA.

Section 9.2 Limitations on Remedies. A judgment requiring payment of money entered against the Borrower/Grantee shall be paid only from available Pledged Revenues unless the Borrower/Grantee in its sole discretion pays the judgment from other available funds.

Section 9.3 Remedies on Default. Whenever any Event of Default has occurred and is continuing, and subject to Section 9.4 hereof, the NMFA may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Borrower/Grantee in this Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Borrower/Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

(b) Terminate this Agreement;

(c) Cease disbursing any further amounts from the Project Account;

(d) Demand that the Borrower/Grantee immediately repay the Loan/Grant Amount or any portion thereof if such funds were not utilized in accordance with this Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the NMFA;

(f) Intervene in judicial proceedings that affect this Agreement or the Pledged Revenues;

(g) Cause the Borrower/Grantee to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(h) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Agreement or to enforce any other of their rights hereunder.

The Borrower/Grantee shall be responsible for reimbursing the NMFA for any and all fees and costs incurred in enforcing the terms of this Agreement.

Section 9.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the NMFA is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Borrower/Grantee or the NMFA to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

Section 9.5 Waivers of Events of Default. The NMFA may, in its discretion, waive any Event of Default hereunder and the consequences of any such Event of Default; provided, however, all expenses of the NMFA in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by a written statement of waiver issued by the NMFA. In case of any such waiver or rescission, or in case any proceeding taken by the NMFA on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the NMFA shall be restored to its former position and rights hereunder, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 9.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Borrower/Grantee shall default under any of the provisions hereof, and the NMFA shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower/Grantee herein contained, the Borrower/Grantee agrees that it shall, on demand therefor, pay to the NMFA the fees of such attorneys and such other expenses so incurred, to the extent such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided,

however, that the obligation of the Borrower/Grantee under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

ARTICLE X MISCELLANEOUS

Section 10.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Borrower/Grantee, to:

City of Truth or Consequences
Attn.: City Manager
505 Sims Street
Truth or Consequences, New Mexico 87901

If to the NMFA, to:

New Mexico Finance Authority
Attn.: Chief Executive Officer
207 Shelby Street
Santa Fe, New Mexico 87501

The Borrower/Grantee or the NMFA may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.2 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the NMFA and the Borrower/Grantee and their respective successors and assigns, if any.

Section 10.3 Integration. This Agreement and any other agreements, certifications and commitments entered into between the NMFA and the Borrower/Grantee on the Effective Date constitute the entire agreement of the parties regarding the Loan/Grant and the funding of the Project through the Loan/Grant as of the Effective Date, and the terms of this Agreement supersede any prior applications, discussions, understandings or agreements between or among the parties in connection with the Loan/Grant, to the extent such prior applications, discussions, understandings or agreements are inconsistent with this Agreement.

Section 10.4 Amendments. This Agreement may be amended only with the written consent of all of the parties to this Agreement. The consent of the NMFA for amendments not affecting the terms of payment of the loan component of this Agreement may be given by an Authorized Officer of the NMFA. The execution of any such consent by an Authorized Officer of the NMFA shall constitute his or her determination that such amendment does not affect the terms of payment of the loan component of this Agreement.

Section 10.5 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the NMFA

or the CIB, or against any officer, employee, director or member of the Borrower/Grantee, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Borrower/Grantee, the CIB or of the NMFA is hereby expressly waived and released by the Borrower/Grantee, the CIB and the NMFA as a condition of and in consideration for the execution of this Agreement.

Section 10.6 Severability. In the event that any provision of this Agreement, other than the obligation of the Borrower/Grantee to make the Loan Payments, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.7 Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.8 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico. Pursuant to NMSA 1978, § 6-21-26, as amended, the venue for any proceedings or any other action or procedure against the NMFA shall be in Santa Fe County.

Section 10.9 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 10.10 Application of Act and Board Rules. The NMFA and the Borrower/Grantee expressly acknowledge that this Agreement is governed by provisions and requirements of the Act and the Board Rules, as amended and supplemented, and all applicable provisions and requirements of the Act and the Board Rules are incorporated into this Agreement by reference.

Section 10.11 CONSENT TO JURISDICTION. THE BORROWER/GRANTEE IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE DOCUMENTS SIGNED IN CONNECTION WITH THIS TRANSACTION WILL BE LITIGATED IN THE FIRST JUDICIAL DISTRICT COURT, SANTA FE COUNTY, NEW MEXICO, PURSUANT TO NMSA 1978, § 6-21-26.

[Signature pages follow.]

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the NMFA, has executed this Agreement, which was approved by the CIB on May 16, 2024, and by the NMFA's Board of Directors on June 27, 2024, in its corporate name by its duly Authorized Officer; and the Borrower/Grantee has caused this Agreement to be executed and attested by duly Authorized Officers thereof. All of the above are effective as of the date first above written.

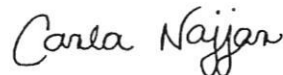
NMFA:

NEW MEXICO FINANCE AUTHORITY

By 
Marquita D. Russel, Chief Executive Officer

Prepared for Execution by Officers of the
New Mexico Finance Authority:

VIRTUE & NAJJAR, PC
As Loan/Grant Counsel

By: 
Carla R. Najjar

Approved for Execution by Officers of the
New Mexico Finance Authority:

By 
Susan G. Pittard, Associate Counsel

BORROWER/GRANTEE:

BORROWER/GRANTEE:

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By: 
Rolf Hechler, Mayor



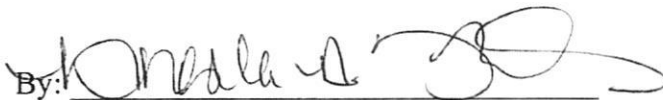
By: 
Angela A. Torres, City Clerk-Treasurer

EXHIBIT "A"

TERM SHEET

\$4,400,000 COLONIAS INFRASTRUCTURE PROJECT LOAN/GRANT TO THE CITY OF TRUTH OR CONSEQUENCES, SIERRA COUNTY, NEW MEXICO

Project Description:	The Project is infrastructure development in accordance with the Act consisting of improvements to a water system, but does not include general operation and maintenance, equipment, housing allowance payments or mortgage subsidies and is more specifically described as the design and construction or replacement of waterlines within the Borrower/Grantee's distribution system and shall include such other related work and revisions necessary to complete the Project.
Grant Amount:	\$3,960,000
Loan Amount:	\$440,000
Interest Component:	0%
Pledged Revenues:	Revenues received by the Borrower/Grantee's under the Tax Ordinance, being revenues of the Borrower/Grantee's Ordinance No. 389 adopted on March 26, 1992, with and effective date of July 1, 1992, as amended by Ordinance No. 472 adopted on March 13, 2000, with an effective date of July 1, 2000, imposing a Municipal Infrastructure Gross Receipts Tax of one-eighth of one percent (0.125%) which Municipal Infrastructure Gross Receipts Tax has been de-earmarked and is now enforceable under NMSA 1978, § 7-19D-9, as amended, which the Borrower/Grantee pledges to the payment of the Loan Payments
Outstanding Senior Obligations for Pledged Revenues:	None.
Outstanding Parity Subordinate Obligations for Pledged Revenues:	NMFA Loan CIF-6442
Authorizing Legislation:	Borrower/Grantee Resolution No. 21 24/25, adopted on November 13, 2024
Local Match:	\$440,000, as calculated pursuant to Section 2.3 of the Policies

Closing Date: December 20, 2024

Project Account Deposit: \$4,400,000

Conditions to be satisfied prior to first disbursement of the Loan/Grant Amount:

Delivery to NMFA of (i) a copy of the agenda of the meeting of the Governing Body at which the Resolution was adopted and at which this Agreement, the Resolution and all other Loan/Grant documents were authorized by the Governing Body (the "Meeting"), certified as a true and correct copy by the City Clerk-Treasurer of the Borrower/Grantee, (ii) a copy of the minutes or record of proceedings of the Meeting, approved and signed by the Mayor and attested to by the City Clerk-Treasurer of the Borrower/Grantee, and (iii) a copy of the notice of meeting for the Meeting evidencing compliance with the Borrower/Grantee's Open Meetings standards in effect on the date of the Meeting.

Other Conditions applicable to the Loan/Grant:

Verification of complete and approved plans/specification prior to disbursement of construction funds; and all Conditions defined in the Agreement.

EXHIBIT "B"

**FORM OF REQUISITION
(Colonias Infrastructure Project Fund)**

RE: \$4,400,000 Loan/Grant Agreement by and between the New Mexico Finance Authority and the City of Truth or Consequences, New Mexico, as Borrower/Grantee (the "Agreement" or "Loan/Grant Agreement").

Loan/Grant No. CIF-6441 Closing Date: December 20, 2024

TO: NEW MEXICO FINANCE AUTHORITY, colonias@nmfa.net

You are hereby authorized to disburse from the Project Account – City of Truth or Consequences with regard to the above-referenced Agreement, the following:

I. PAYMENT INFORMATION

REQUISITION NO. _____ PAYMENT AMOUNT: \$ _____

PAYEE'S NAME: _____

PAYEE'S ADDRESS: _____

II. REQUISITION INFORMATION (complete for all payments)

- *Attach proof of expenditures (cancelled check, wire transfer receipt, bank ledger, etc.).*
- *List all Vendors, Payment Purposes, or Eligible Item Categories below or attach separate page or spreadsheet if needed.*

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

Vendor Name _____

Total Amount \$ _____ Invoice No.(s) _____

Purpose of Payment _____

Eligible Item Category _____

III. WIRING INFORMATION:

BANK NAME:	
ABA ROUTING NUMBER:	
ACCOUNT NUMBER:	

IV. MATCH INFORMATION

AMOUNT OF LOCAL MATCH EXPENDED SINCE LAST REQUISITION: \$ _____
Attach proof of expenditures for hard match (detailed invoices, cancelled checks, wire transfer receipt, bank statement, etc.) and written certification of type and value of any soft match.

AMOUNT OF LOCAL MATCH EXPENDED TO DATE: \$ _____

TOTAL REQUIRED MATCH: \$440,000

V. VERIFICATION AND AUTHORIZATION

Each obligation, item of cost or expense mentioned herein is for a loan/grant made by the NMFA pursuant to the Colonias Infrastructure Act to the Borrower/Grantee within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Project Account – City of Truth or Consequences, New Mexico. All representations contained in the Agreement, the related closing documents remain true and correct, and the Borrower/Grantee is not in breach of any of the covenants contained therein.

The proceeds of the Loan/Grant are to be used to pay the costs of Eligible Items, as defined in the Agreement. Eligible Items include (1) planning, designing, construction, improving or expanding a qualified project; (2) developing engineering feasibility reports for Qualified Projects; (3) inspecting construction of Qualified Projects; (4) providing professional services; (5) completing environmental assessments or archeological clearances and other surveys for Qualified Projects; (6) acquiring land, water rights, easements or rights of way; (7) eligible legal costs and eligible fiscal agent fees associated with development of Qualified Projects, within limits set by the Colonias Infrastructure Board (“CIB”).

All construction and all installation of equipment with proceeds of the Loan/Grant has or will be used in accordance with plans and/or specifications approved by all entities required by the CIB and the New Mexico Finance Authority in their sole discretion to approve such plans and specifications, has or will be acquired in compliance with applicable procurement laws and regulations and has or will be inspected and approved in accordance with applicable laws and regulations.

Capitalized terms used herein, are used as defined or used in the Loan/Grant Agreement.

DATE: _____

AUTHORIZED OFFICER

(As Provided in the Loan/Grant Agreement)

Print Name: _____

Print Title: _____

EXHIBIT "C"

PAYMENT PROVISIONS OF THE LOAN

The Loan Amount shall be payable by the Borrower/Grantee to the NMFA in twenty (20) annual installments of principal pursuant to the attached debt service schedule, beginning June 1, 2027 and ending June 1, 2046. The Loan Amount shall be pre-payable upon expiration of the Interim Period without penalty.

SOURCES AND USES OF FUNDS

City of Truth or Consequences
Water-Wastewater Replacement

Sources:	Waterline Replace, CIF-6441	WWTP Bar Screen Replace, CIF-6442	Total
Bond Proceeds:			
Par Amount	440,000.00	30,540.00	470,540.00
Other Sources of Funds:			
CIF Grant Funds	3,960,000.00	274,860.00	4,234,860.00
	4,400,000.00	305,400.00	4,705,400.00
Uses:	Waterline Replace, CIF-6441	WWTP Bar Screen Replace, CIF-6442	Total
Project Fund Deposits:			
Project Fund	4,400,000.00	305,400.00	4,705,400.00
	4,400,000.00	305,400.00	4,705,400.00

BOND SUMMARY STATISTICS

City of Truth or Consequences
Water-Wastewater Replacement

	Waterline Replace, CIF-6441	WWTP Bar Screen Replace, CIF-6442	Aggregate
Dated Date	12/20/2024	12/20/2024	12/20/2024
Delivery Date	12/20/2024	12/20/2024	12/20/2024
Last Maturity	06/01/2046	06/01/2046	06/01/2046
Arbitrage Yield	0.249877%	0.249877%	0.249877%
True Interest Cost (TIC)	0.249876%	0.249895%	0.249877%
Net Interest Cost (NIC)	0.250001%	0.250020%	0.250002%
All-In TIC	0.249876%	0.249895%	0.249877%
Average Coupon	0.250001%	0.250020%	0.250002%
Average Life (years)	12.065	12.065	12.065
Duration of Issue (years)	11.858	11.858	11.858
Par Amount	440,000.00	30,540.00	470,540.00
Bond Proceeds	440,000.00	30,540.00	470,540.00
Total Interest	13,271.36	921.21	14,192.57
Net Interest	13,271.36	921.21	14,192.57
Total Debt Service	453,271.36	31,461.21	484,732.57
Maximum Annual Debt Service	22,664.00	1,573.60	24,237.42
Average Annual Debt Service	21,134.27	1,465.91	22,601.18
Underwriter's Fees (per \$1000)			
Average Takedown			
Other Fee			
Total Underwriter's Discount			
Bid Price	100.000000	100.000000	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life
Loan Component	470,540.00	100.000	0.250%	12.065
	470,540.00			12.065

BOND SUMMARY STATISTICS

City of Truth or Consequences
Water-Wastewater Replacement

	TIC	All-In TIC	Arbitrage Yield
Par Value	470,540.00	470,540.00	470,540.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense			
- Other Amounts			
Target Value	470,540.00	470,540.00	470,540.00
Target Date	12/20/2024	12/20/2024	12/20/2024
Yield	0.249877%	0.249877%	0.249877%

BOND DEBT SERVICE**City of Truth or Consequences
Water-Wastewater Replacement**

<i>Period Ending</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Debt Service</i>
06/01/2027	21,358	0.250%	2,878.79	24,236.79
06/01/2028	23,113	0.250%	1,122.96	24,235.96
06/01/2029	23,171	0.250%	1,065.18	24,236.18
06/01/2030	23,230	0.250%	1,007.26	24,237.26
06/01/2031	23,288	0.250%	949.16	24,237.16
06/01/2032	23,345	0.250%	890.94	24,235.94
06/01/2033	23,404	0.250%	832.60	24,236.60
06/01/2034	23,463	0.250%	774.08	24,237.08
06/01/2035	23,522	0.250%	715.42	24,237.42
06/01/2036	23,580	0.250%	656.62	24,236.62
06/01/2037	23,639	0.250%	597.68	24,236.68
06/01/2038	23,698	0.250%	538.58	24,236.58
06/01/2039	23,757	0.250%	479.34	24,236.34
06/01/2040	23,817	0.250%	419.94	24,236.94
06/01/2041	23,877	0.250%	360.40	24,237.40
06/01/2042	23,936	0.250%	300.70	24,236.70
06/01/2043	23,995	0.250%	240.86	24,235.86
06/01/2044	24,055	0.250%	180.88	24,235.88
06/01/2045	24,116	0.250%	120.74	24,236.74
06/01/2046	24,176	0.250%	60.44	24,236.44
	470,540		14,192.57	484,732.57

DETAILED BOND DEBT SERVICE

City of Truth or Consequences
Waterline Replace, CIF-6441

Loan Component (LOAN)

<i>Period Ending</i>	<i>Principal</i>	<i>Coupon</i>	<i>Interest</i>	<i>Debt Service</i>
06/01/2027	19,972	0.250%	2,691.94	22,663.94
06/01/2028	21,613	0.250%	1,050.08	22,663.08
06/01/2029	21,667	0.250%	996.04	22,663.04
06/01/2030	21,722	0.250%	941.88	22,663.88
06/01/2031	21,776	0.250%	887.56	22,663.56
06/01/2032	21,830	0.250%	833.12	22,663.12
06/01/2033	21,885	0.250%	778.56	22,663.56
06/01/2034	21,940	0.250%	723.84	22,663.84
06/01/2035	21,995	0.250%	668.98	22,663.98
06/01/2036	22,050	0.250%	614.00	22,664.00
06/01/2037	22,105	0.250%	558.88	22,663.88
06/01/2038	22,160	0.250%	503.62	22,663.62
06/01/2039	22,215	0.250%	448.22	22,663.22
06/01/2040	22,271	0.250%	392.68	22,663.68
06/01/2041	22,327	0.250%	337.00	22,664.00
06/01/2042	22,382	0.250%	281.18	22,663.18
06/01/2043	22,438	0.250%	225.22	22,663.22
06/01/2044	22,494	0.250%	169.14	22,663.14
06/01/2045	22,551	0.250%	112.90	22,663.90
06/01/2046	22,607	0.250%	56.52	22,663.52
	440,000		13,271.36	453,271.36

UNIVERSAL BOND SOLUTION

City of Truth or Consequences Water-Wastewater Replacement Universal Bond Solution Component

<i>Period Ending</i>	<i>Proposed Principal</i>	<i>Proposed Debt Service</i>	<i>Existing Debt Service</i>	<i>Total Adj Debt Service</i>	<i>Revenue Constraints</i>	<i>Unused Revenues</i>	<i>Debt Service Coverage</i>
06/01/2025					247,412	247,412	
06/01/2026					247,412	247,412	
06/01/2027	21,358	24,237	90,633	114,870	247,412	132,542	215.38%
06/01/2028	23,113	24,236	83,800	108,036	247,412	139,376	229.01%
06/01/2029	23,171	24,236	83,600	107,836	247,412	139,576	229.43%
06/01/2030	23,230	24,237	83,400	107,637	247,412	139,775	229.86%
06/01/2031	23,288	24,237	83,200	107,437	247,412	139,975	230.29%
06/01/2032	23,345	24,236	83,000	107,236	247,412	140,176	230.72%
06/01/2033	23,404	24,237	82,800	107,037	247,412	140,375	231.15%
06/01/2034	23,463	24,237	82,600	106,837	247,412	140,575	231.58%
06/01/2035	23,522	24,237	82,400	106,637	247,412	140,775	232.01%
06/01/2036	23,580	24,237	82,200	106,437	247,412	140,975	232.45%
06/01/2037	23,639	24,237	82,000	106,237	247,412	141,175	232.89%
06/01/2038	23,698	24,237	81,800	106,037	247,412	141,375	233.33%
06/01/2039	23,757	24,236	81,600	105,836	247,412	141,576	233.77%
06/01/2040	23,817	24,237	81,400	105,637	247,412	141,775	234.21%
06/01/2041	23,877	24,237	81,200	105,437	247,412	141,975	234.65%
06/01/2042	23,936	24,237	81,000	105,237	247,412	142,175	235.10%
06/01/2043	23,995	24,236	80,800	105,036	247,412	142,376	235.55%
06/01/2044	24,055	24,236	80,600	104,836	247,412	142,576	236.00%
06/01/2045	24,116	24,237	80,400	104,637	247,412	142,775	236.45%
06/01/2046	24,176	24,236	80,200	104,436	247,412	142,976	236.90%
	470,540	484,733	1,648,633	2,133,366	5,443,064	3,309,698	

COLONIAS INFRASTRUCTURE PROJECT FUND STATUS REPORT
PREPARED FOR THE
NEW MEXICO FINANCE AUTHORITY

**All fields must be completed*

EXHIBIT "E"

FORM OF CERTIFICATE OF COMPLETION

RE: \$4,400,000 Loan/Grant Agreement by and between the NMFA and the City of Truth or Consequences, New Mexico, as Borrower/Grantee (the "Agreement" or "Loan/Grant Agreement")

Loan/Grant No. CIF-6441

Closing Date: December 20, 2024

TO: NEW MEXICO FINANCE AUTHORITY, colonias@nmfa.net

I, _____, the _____ of the
[Name] [Title or position]

Borrower/Grantee, hereby certify as follows:

1. The project described in the Agreement (the "Project"), or the applicable phase of the project if funding was for a phased Project, was completed and placed in service on _____, 20____.

2. The total cost of the Project was \$ _____.

3. Cost of the Project paid from the Loan/Grant Amount was \$ _____.

4. The portion of the Loan/Grant Amount unexpended for the Project is \$ _____.

5. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Agreement.

This certificate shall not be deemed to prejudice or affect any rights of or against third parties which exist at the date of this certificate or which may subsequently come into being.

CITY OF TRUTH OR CONSEQUENCES,
SIERRA COUNTY, NEW MEXICO

By: _____

Its: _____

EXHIBIT “F”

DOCUMENTS

1. Open Meetings Act Resolution No. 01 24/25 adopted by the Borrower/Grantee on July 10, 2024
2. Resolution No. 21 24/25 adopted on November 13, 2024, Notice of Meeting, Meeting Agenda, and Affidavit of Publication of Notice of Adoption of Resolution in the *Sierra County Sentinel*
3. Loan/Grant Agreement
4. General and No Litigation Certificate of the Borrower/Grantee
5. Delivery, Deposit and Cross-Receipt Certificate
6. Right of Way Certificate of Borrower/Grantee
7. Final Opinion of Counsel for the Borrower/Grantee
8. Approving Opinion of Virtue & Najjar, PC, Loan/Grant Counsel to the NMFA
9. NMFA Application and Project Approval (informational only)



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: October 22, 2025

Agenda Item #: F.3

SUBJECT: Purchases Over \$60,000.00
DEPARTMENT: Finance
DATE SUBMITTED: October 17, 2025
SUBMITTED BY: Jocelyn Holguin, Finance Director
WHO WILL PRESENT THE ITEM: Traci Alvarez, Assistant City Manager

Summary/Background:

F. CONSENT CALENDAR

Per Resolution No 46 20/21 Execution of Contracts; Grant Agreements; Memoranda of Understanding; Joint Powers Agreements; Settlement Agreements; Purchases (Contract and Purchases Over \$20,000. 00).

Recommendation:

Items \$60,000 and over for Commission approval prior to issuing a purchase order.

Attachments:

- ITB #2025-09-007 SHOVEL READY PROJECT 1-NOTICE OF AWARD- J & H SERVICES INC.-LOWEST BIDDER

Fiscal Impact (Finance): N/A

Yes, see attached: **Multi-Funding Sources: \$5,765,435.12**

Legal Review (City Attorney): N/A

Yes, Contract Agreement

Approved For Submittal By: ☒ Department Director

Reviewed by: ☐ City Clerk ☒ Finance ☒ Legal ☒ Other: Wilson & Co.

Final Approval: ☒ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. - Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC Agendas 10/22/2025

Rolf Hechler
Mayor



Destiny Mitchell
Commissioner

Amanda Forrister
Mayor Pro-Tem

Ingo Hoeppner
Commissioner

Merry Jo Fahl
Commissioner

Gary Whitehead
City Manager

505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.org

October 17, 2025

To City Mayor, Pro-Tem and Commissioners,

RE: ITB #2025-09-007 SHOVEL READY PROJECT 1- NOTICE OF AWARD

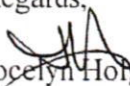
The Procurement Department along with Community Development and Wilson & Company issued an Invitation to Bid for the Shovel Ready Project 1. Shovel ready project beginning on Cook Street Tank in alignment on to Broadway Street, proceeding from Henson Street terminating at Morgan Street. The waterline project lowest qualified bidder is J&H Services.

There were (4) responsive bids submitted, J& H Services has been selected for contract award. We are requesting Commission approval to move forward with the project. Attached packet includes intent to award, bid tabulation and agreement. I will defer to Traci Alvarez, Assistant City Manager, in my absence as I will be away at conference. Thank you.

Please, review the attached documents and approve the requested procurement. Thank you.

Multi-Funding Sources : \$5,765,435.12

Regards,


Jocelyn Holguin
Finance Director

Commission Approved: Yes ☐ No ☐ Tabled ☐

Date of Approval/ Denied/Tabled: _____

Notes: _____ Requisition #95439

Rolf Hechler
Mayor

Amanda Forrister
Mayor Pro-Tem

Merry Jo Fahl
Commissioner



505 Sims St.
Truth or Consequences, New Mexico 87901
P: 575-894-6673 ♦ F: 575-894-7767
www.torcnm.org

Destiny Mitchell
Commissioner

Ingo Hoepfner
Commissioner

Gary Whitehead
City Manager

October 16, 2025

T or C Shovel Ready Bidders

To Whom it May Concern,

Re: Notice of Intent: City of Truth or Consequences Shovel Ready Water Projects 1

Thank you for your interest and bid on the Shovel Ready Water Project. Your time and effort were much appreciated.

Bids were received at the City of Truth or Consequences Finance Department located at 505 Sims Street, Truth or Consequences, NM, on Thursday, October 9th, 2025, until 2:00 pm MST local time. At 2:15 pm MST, October 9, 2025, the bids were moved to the Commission Chambers at 405 W 3rd Street, Truth or Consequences, NM to be publicly opened and read. The following bids were received:

No.	Company	Base Bid (excl. NMGR)
1	J & H Services Inc	\$5,319,894.00
2	SMITHCO Construction, Inc.	\$5,509,102.00
3	DUB-L-EE LLC	\$5,996,682.84
4	TLC Company, Inc	\$6,405,829.00

A complete tabulation of bids is attached. The evaluation of the bid is based on the Base Bid. Four bids were received from J & H Services Inc, Smithco Construction Inc, DUB-L-EE LLC, and TLC Company Inc. The low bidder was J & H Services Inc based on the Base Bid.

Based on the information provided we, therefore, will proceed with awarding the contract for the City of Truth or Consequences Shovel Ready Water Projects 1 to J & H Services Inc for a total contract award amount of \$5,319,894.00, excluding NMGR with a the NMGR of \$445,541.12, for a total contract amount of \$5,765,435.12 w/ NMGR.

Sincerely,

Jocelyn Holguin

Finance Director/ CPO
City of Truth or Consequences

[illegible]

20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100	20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
---	---

	\$7,000,000.00	\$7,000,000.00
	\$60,722.18	\$14,797,772.40
M. 402,000.00		\$14,797,772.40

	\$6,400,000	\$6,400,000
	\$800,000	\$800,000
	\$7,200,000	\$7,200,000

Net sales	1,200,000	1,200,000
Cost of goods sold	(750,000)	(750,000)
Gross profit	450,000	450,000
Selling expenses	(100,000)	(100,000)
Administrative expenses	(150,000)	(150,000)
Depreciation	(20,000)	(20,000)
Interest expense	(10,000)	(10,000)
Income before taxes	170,000	170,000
Taxes	(40,000)	(40,000)
Net income	130,000	130,000

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between The City of Truth or Consequences ("Owner") and [J & H Services Inc] ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The project includes the replacement and new installation of approximately 19 linear feet (LF) of 4-inch waterline, 970 LF of 6-inch waterline, 2,860 LF of 8-inch waterline, 3,959 LF of 10-inch waterline, and 5,647 LF of 12-inch C-900 DR-18 PVC waterline using open trench methods. It also includes the installation of approximately 74 LF of 18-inch steel casing by jack and bore, as well as 170 LF of 8-inch fusible PVC and 456 LF of 12-inch fusible PVC waterline segments installed by horizontal directional drilling. Some of the waterline replacements will occur within NMDOT right-of-way.

The scope of work also includes the installation of a 300,000-gallon storage tank, cathodic protection, and a transducer, along with the replacement of water service lines and the installation of valves, meters, hydrants, and connections to the existing system. Roadway work consists of asphalt removal and replacement to facilitate trenching and site restoration.

ARTICLE 2—THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: **City of Truth or Consequences Shovel Ready Water Projects 1**

ARTICLE 3—ENGINEER

3.01 The Owner has retained **Wilson & Company Inc., Engineers & Architects ("Engineer")** to act as Owner's representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by the **Wilson & Company Inc., Engineers & Architects ("Engineer")**.

ARTICLE 4—CONTRACT TIMES

4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.03 *Contract Times: Days*

A. The Work will be substantially complete within **370** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).

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completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within **400** days after the date when the Contract Times commence to run.

4.05 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner **\$1,570.00** for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner **\$1,570.00** for each day that expires after such time until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.

ARTICLE 5— CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:

- A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item).

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ITEM NO.	DESCRIPTION	UNIT	QTY	BID UNIT PRICE	BID AMOUNT
ALLOWANCES AND MISCELLANEOUS					
1	Mobilization & Demobilization	LS	1	\$480,000.00	\$480,000.00
2	SWPPP Preparation	LS	1	\$6,500.00	\$6,500.00
3	SWPPP Implementation and inspection	LS	1	\$10,500.00	\$10,500.00

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).

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ITEM NO.	DESCRIPTION	UNIT	QTY	BID UNIT PRICE	BID AMOUNT
4	Construction Survey to include staking, layout and identifying project boundaries.	LS	1	\$120,000.00	\$120,000.00
5	Traffic Control	LS	1	\$171,000.00	\$171,000.00
6	Utility Relocation	ALLW	1	\$75,000.00	\$75,000.00
7	Material Testing Allowance	ALLW	1	\$30,000.00	\$30,000.00
8	Subsurface Utility Locating	ALLW	1	\$100,000.00	\$100,000.00
9	SCADA Programing Allowance	ALLW	1	\$4,000.00	\$4,000.00
9a	Residential Meters	ALLW	1	\$15,200.00	\$15,200.00
IMPROVEMENTS TO DISTRIBUTION SYSTEM					
10	4" Waterline C-900 DR-18 PVC Pipe Installed	LF	125	\$38.00	\$4,750.00
11	6" Waterline C-900 DR-18 PVC Pipe Installed	LF	1,147	\$44.00	\$50,468.00
12	8" Waterline C-900 DR-18 PVC Pipe Installed	LF	2,890	\$53.00	\$153,170.00
13	10" Waterline C-900 DR-18 PVC Pipe Installed	LF	3,989	\$64.00	\$255,296.00
13a	12" Waterline C-900 DR-18 PVC Pipe Installed	LF	5,544	\$76.00	\$421,344.00
13b	Furnish and Install 16-inch steel casing for Main St. crossing, (include trenchless installation, all materials, labor, carrier pipe, restraints, casing spacers, end seals, bore and receiving pit excavation, backfill, compaction, removal of waste excavation and site restoration), CIP	LF	12	\$265.00	\$3,180.00
15	Furnish and Install 18-inch steel casing for N. Date St. crossing, (include trenchless installation, all materials, labor, carrier pipe, restraints, casing spacers, end seals, bore and receiving pit excavation, backfill, compaction, removal of waste excavation and site restoration), CIP	LF	74	\$750.00	\$55,500.00
16	Furnish and Install 12-inch C900 FPVC for S Broadway St Alignment crossing, (include trenchless installation, all materials, labor, restraints, end seals, bore and receiving pit excavation, backfill, compaction, removal of waste excavation and site restoration), CIP	LF	497	\$455.00	\$226,135.00

ITEM NO.	DESCRIPTION	UNIT	QTY	BID UNIT PRICE	BID AMOUNT
17	Furnish and Install 8-inch C900 FPVC for Second Ave Alignment crossing, (include trenchless installation, all materials, labor, restraints, end seals, bore and receiving pit excavation, backfill, compaction, removal of waste excavation and site restoration), CIP	LF	170	\$255.00	\$43,350.00
19	4" PVC pipe restrained coupling installed Series	EA	14	\$1,650.00	\$23,100.00
20	6" PVC pipe restrained coupling installed Series	EA	7	\$1,740.00	\$12,180.00
20a	8" PVC pipe restrained coupling installed Series	EA	8	\$2,000.00	\$16,000.00
22	12" PVC pipe restrained coupling installed Series	EA	4	\$2,500.00	\$10,000.00
23	4" Gate Valves w/ Valve Can, CIP 2333	EA	2	\$2,200.00	\$4,400.00
24	6" Gate Valves w/ Valve Can, CIP 2333	EA	16	\$2,500.00	\$40,000.00
25	8" Gate Valves w/ Valve Can, CIP 2333	EA	23	\$3,400.00	\$78,200.00
26	10" Gate Valves w/ Valve Can, CIP 2333	EA	18	\$4,500.00	\$81,000.00
26a	12" Gate Valves w/ Valve Can, CIP 2333	EA	10	\$5,600.00	\$56,000.00
28	1 "Combination Air Release Valve (CARV) Assembly	EA	4	\$8,100.00	\$32,400.00
29	3 1/2'-Depth Fire Hydrant w/ Piping, Valves, and Connection	EA	12	\$9,200.00	\$110,400.00
30	3 1/2'-Depth Flush Hydrant w/ Piping, Valves, and Connection	EA	4	\$7,000.00	\$28,000.00
31	Pressurized Waterline Connections, CIP	EA	32	\$4,700.00	\$150,400.00
32	Ductile Iron MJ Fittings, All Sizes, Class 25, CIP	LB	19,686	\$8.00	\$157,488.00
33	Mechanically Restrained Joints, DI & PVC, 4"-8", CIP	EA	279	\$430.00	\$119,970.00
34	Mechanically Restrained Joints, DI & PVC, 10"-12", CIP	EA	163	\$900.00	\$146,700.00
35	Mechanically Restrained Joints, DI & PVC, 14"-16", CIP.	EA	1	\$1,000.00	\$1,000.00

ITEM NO.	DESCRIPTION	UNIT	QTY	BID UNIT PRICE	BID AMOUNT
35a	Water Meter Box Remove & Replace (by Open Trench) (Including connectors & smart valve, potholing, bedding, connections to new water main, connection to existing water service line include all fittings regardless of materials and types of appurtenances, all material, labor, tapping saddle, corporation stop, fittings, associated appurtenances, backfilling and site restoration), CIP (CU-107)	EA	47	\$2,200.00	\$103,400.00
35b	Water Meter Box Remove & Replace (Trenchless) (Including connectors & smart valve, potholing, bedding, connections to new water main, connection to existing water service line include all fittings regardless of materials and types of appurtenances, all material, labor, tapping saddle, corporation stop, fittings, associated appurtenances, backfilling and site restoration), CIP (CU-107)	EA	21	\$2,500.00	\$52,500.00
37	6" Pipe Cut and Cap existing line to include two Caps, restrain Block, trust Blocking, Asphalt pavement, saw cut, remove, dispose, and replacement In-kind. Base course replacement in-kind incidental, CIP.(CU-107)	EA	14	\$2,900.00	\$40,600.00
37a	8" Pipe Cut and Cap existing line to include two Caps, restrain Block, trust Blocking, Asphalt pavement, saw cut, remove, dispose, and replacement In-kind. Base course replacement in-kind incidental, CIP.(CU-107)	EA	26	\$3,000.00	\$78,000.00
39	12" Pipe Cut and Cap existing line to include two Caps, restrain Block, trust Blocking, Asphalt pavement, saw cut, remove, dispose, and replacement In-kind. Base course replacement in-kind incidental, CIP.(CU-107)	EA	2	\$4,300.00	\$8,600.00
40	14" Pipe Cut and Cap existing line to include two Caps, restrain Block, trust Blocking, Asphalt pavement, saw cut, remove, dispose, and replacement In-kind. Base course replacement in-kind incidental, CIP.(CU-107)	EA	1	\$6,100.00	\$6,100.00
41	Dewatering of Trench and Bore Pits, CIP	LF	750	\$380.00	\$285,000.00

ITEM NO.	DESCRIPTION	UNIT	QTY	BID UNIT PRICE	BID AMOUNT
ROADWAY					
41a	Asphalt Roadway, Remove, Dispose and Replace with SP IV, 3" Thick for Residential Streets, include Base Course and, Subgrade Prep, CIP	SY	6,138	\$55.00	\$337,590.00
41b	Asphalt Roadway, Remove, Dispose and Replace with SP III, 4" Thick for NMDOT ROW, include Base Course and Subgrade Prep, CIP	SY	329	\$60.00	\$19,740.00
45	Remove and replace Curb and Gutter, CIP	LF	64	\$77.00	\$4,928.00
46	Remove and replace Sidewalk including Remove and Replace Sidewalk Ramp to Existing Design", CIP	SY	280	\$121.00	\$33,880.00
47	Concrete Spillway, 6" Thick, Reinforced PC Concrete, CIP	SF	506	\$35.00	\$17,710.00
ELECTRICAL / CONTROLS					
48	Cook St Tank Transducer Installation (Electrical), CIP	LS	1	\$82,000.00	\$82,000.00
STORAGE TANK					
49	Site Grading/Excavation	CY	1,000	\$23.00	\$23,000.00
50	Engineered Fill/Subgrade Prep for Tank Foundation, Including Compaction and Testing	CY	630	\$62.00	\$39,060.00
51a	Furnish and Install 18-in Rip/Rap	CY	7	\$375.00	\$2,625.00
52	Furnish and Install 0.300 Million Gallon Welded Steel Tank, AWWA D100-11, CIP	LS	1	\$567,000.00	\$567,000.00
53	Tank Foundation, Installed	LS	1	\$53,000.00	\$53,000.00
54	Furnish and Install Cathodic Protection for Tank, CIP	LS	1	\$30,000.00	\$30,000.00
55	Furnish and Install 18-Inch DIP, Including Trenching and Compacted Backfill, per APWA Standard Spec. 801, CIP	LF	301	\$195.00	\$58,695.00
56	Ductile Iron MJ fittings, class 250, 18" Waterlines incl. Joining Material	LB	3,795	\$13.00	\$49,335.00
57	18" Gate Valves w/ Valve Can, CIP	EA	3	\$31,000.00	\$93,000.00
58	4 1/2'-Depth Flush Hydrant w/ Piping Valves, and Connection	EA	1	\$10,000.00	\$10,000.00
59	Furnish and Install 18-Inch DI Mechanically Restrained Joint Assembly, per APWA Standard Spec. 801, CIP	EA	20	\$1,575.00	\$31,500.00
CONSTRUCTION SUBTOTAL					\$5,319,894.00
NMGRT (8.375%)					\$445,541.12

EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).

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ITEM NO.	DESCRIPTION	UNIT	QTY	BID UNIT PRICE	BID AMOUNT
TOTAL PROJECT COSTS					\$5,765,435.12

ARTICLE 6—PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **[25th]** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. 100 percent of the value of the Work completed (with the balance being retainage).
 - b. 100 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to **100** percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less **100** percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 Consent of Surety

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 Interest

- A. All amounts not paid when due will bear interest at the rate of **1.5** percent per annum.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement.
 - 2. Bonds:
 - a. Performance bond (together with power of attorney).
 - b. Payment bond (together with power of attorney).
 - 3. General Conditions.
 - 4. Supplementary Conditions.
 - 5. Specifications as listed in the table of contents of the project manual (copy of list attached).
 - 6. Drawings (not attached but incorporated by reference) consisting of **seventy-four (74)** sheets with each sheet bearing the following general title: **City of Truth or Consequences Shovel Ready Water Projects 1**
 - 7. Addenda (numbers [1] to [4], inclusive).
 - 8. Exhibits to this Agreement (enumerated as follows):
 - a. **Contractor's Bid**
 - 9. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 *Contractor's Representations*

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 *Funding*

- A. The terms of this agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Owner may immediately terminate this Agreement by giving Contractor written notice of such termination. The Owner's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Owner or the NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Owner or the Department.
- B. This contract is funded in whole or in part by funds made available under a New Mexico Finance Authority Agreement. Should the New Mexico Finance Authority early terminate the grant agreement, the Owner may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Owner's only liability shall be to pay Contractor or vendor for acceptable goods delivered and services rendered before the termination date.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on [] (which is the Effective Date of the Contract).

Owner:

Contractor:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

(typed or printed)

Title:

(typed or printed)

(If [Type of Entity] is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:

(individual's signature)

Title:

(typed or printed)

Address for giving notices:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Designated Representative:

Name:

(typed or printed)

Title:

(typed or printed)

Address:

Phone:

Email:

(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Phone:

Email:

License No.:

(where applicable)

State:

BOARD OF CITY COMMISSIONERS

42. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To: City of Truth or Consequences

Jocelyn Holguin, Finance Director/Chief Procurement Officer

505 Sims Street Truth or Consequences, NM 87901

To: CONTRACTOR

Printed Name:

Address:

By: _____ Date: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the City Chief Procurement Officer below:

By: _____ Date: _____

Gary Whitehead, City Manager

Project Manager:

Project Manager:

Traci Alvarez

Assistant City Manager

City of Truth or Consequences

575-952-0565

talvarez@torcnm.org

BOARD OF CITY COMMISSIONERS

APPROVED, ADOPTED AND PASSED on this day of _____, 2025.

Rolf Hechler, Mayor

Attest:

Angela Torres

City Clerk

City of Truth or Consequences Chief Procurement Officer:

By: _____ Date: _____

Jocelyn Holguin, Finance Director/ CPO

City of Truth or Consequences

NOTICE OF AWARD

Date of Issuance:

Owner: Truth or Consequences, New Mexico Owner's Project No.: 2025-09-007
Engineer: Wilson & Company, Inc. Engineer's Project No.: 2500015900
Project: City of Truth or Consequences Shovel Ready Water Projects 1
Contract Name: City of Truth or Consequences Shovel Ready Water Projects 1
Bidder: J & H Services Inc
Bidder's Address: 6616 Gulton Ct NE, Suite 90, Albuquerque, NM 87109

You are notified that Owner has accepted your Bid dated [10/09/2025] for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

The Project includes the following Work:

The project includes the replacement and new installation of approximately 19 linear feet (LF) of 4-inch waterline, 970 LF of 6-inch waterline, 2,860 LF of 8-inch waterline, 3,959 LF of 10-inch waterline, and 5,647 LF of 12-inch C-900 DR-18 PVC waterline using open trench methods. It also includes the installation of approximately 74 LF of 18-inch steel casing by jack and bore, as well as 170 LF of 8-inch fusible PVC and 456 LF of 12-inch fusible PVC waterline segments installed by horizontal directional drilling. Some of the waterline replacement will occur within NMDOT right-of-way.

The scope of work also includes the installation of a 300,000-gallon storage tank, cathodic protection, and a transducer, along with the replacement of water service lines and the installation of valves, meters, hydrants, and connections to the existing system. Roadway work consists of asphalt removal and replacement to facilitate trenching and site restoration.

The Contract Price of the awarded Contract is \$[5,319,894.00 excluding NMGRT]. Contract Price is subject to adjustment based on the provisions of the Contract, including but not limited to those governing changes, Unit Price Work, and Work performed on a cost-plus-fee basis, as applicable.

Three unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

☒ Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner **Three** counterparts of the Agreement, signed by Bidder (as Contractor).
2. Deliver with the signed Agreement(s) the Contract security (such as required performance and payment bonds) and insurance documentation, as specified in the Instructions to Bidders and in the General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any): **[Describe other conditions that require Successful Bidder's compliance]**

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within 10 days after you comply with the above conditions, Owner will return to you one fully signed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: **The City of Truth or Consequences, New Mexico**

By *(signature)*: _____

Name *(printed)*: _____

Title: _____

Copy: Engineer

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT
CAPITAL APPROPRIATION PROJECT
T OR C WATER DISTRIBUTION LINE RPLC
SAP 24-I2460-GF**

THIS AGREEMENT between the New Mexico Environment Department hereinafter called the “Department” or NMED, and City of Truth or Consequences hereinafter called the “Grantee” becomes effective on the date signed by the NMED.

RECITALS

WHEREAS, in the Laws of 2024, Chapter 66, Section 20, Subsection 106 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

SAP 24-I2460-GF \$4,400,000.00 APPROPRIATION REVERSION DATE: June 30, 2028

Laws of 2024, Chapter 66, Section 20, Subsection 106, Four Million Four Hundred Thousand Dollars, (\$4,400,000.00), from the General Fund to plan, design and construct water system improvements, including replacement of water distribution lines, in Truth or Consequences in Sierra county;

The Grantee’s total reimbursements shall not exceed Four Million Four Hundred Thousand Dollars, \$4,400,000.00 (the “Appropriation Amount”) minus the allocation for Art in Public Places (“AIPP amount”)¹, if

¹ The AIPP amount is “an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000).” Section 13-4A-4 NMSA 1978.

applicable, Four Million Four Hundred Thousand Dollars, \$4,400,000.00 (the “Adjusted Appropriation Amount”).

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the “Project”; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the “Project Description.” The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT’S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued, and the Grantee has received a Notice of Department’s Obligation to Reimburse² Grantee (hereinafter referred to as “Notice of Obligation”). This Grant Agreement and the disbursement of all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee’s expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee’s Third-Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee’s expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as “Third Party Obligations”; and
- (iv) The Grantee’s submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

² “Reimburse” as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third-party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee shall request approval of its obligation(s) by submitting a Notice of Obligation form as provided by the Department. The Grantee's submission of documentation of all Third-Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third-Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. The Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third-Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed on their Resolution of Signatory Authority as their representatives with all matters concerning this Agreement.

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

NMED Program Administrator

NMENV-cpbsap@state.nm.us

505-670-3418

505-670-3615

NMED Project Manager

Name: Steven Deal

Email: steven.deal@env.nm.gov

Telephone: 505-670-2926

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above-named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2028 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are **not** expended, and an expenditure has **not** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION**A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

If the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration. Additionally, the Grantee shall certify on the Request for Payment form that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give the Grantee a minimum of thirty (30) days' written notice of any changes to the information the Grantee is required to report.

Quarterly reports are due on the last day of each quarter. Quarter end reporting periods are September 30th, December 31st, March 31st, and June 30th.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

The Grantee shall respond to such requests for additional information within a reasonable amount of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form provided by the Department. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third-party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of execution of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred, or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third-party contractor or vendor; or
- (ii) No more than twenty (20) days from date of Early Termination; or
- (iii) For reverting projects, no more than twenty (20) days after June 30 reversion unless advised in writing differently.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to the Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules, and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age, or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.

- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct, and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third-Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans, and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

- A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.
- B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.
- C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be

required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred because of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Truth or Consequences may immediately terminate this Agreement by giving Contractor written notice of such termination. The Truth or Consequences's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Truth or Consequences or the New Mexico Environment or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Truth or Consequences or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the New Mexico Environment Department early terminate the grant agreement, the Truth or Consequence may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Truth or Consequences only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor.
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement.
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance.
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

Authorization Page
T OR C WATER DISTRIBUTION LINE RPLC SAP 24-I2460-GF

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

City of Truth or Consequences

Entity Name

Signature of Official with Authority to Bind Grantee

By: Rolf Hechler

(Print Name)

Its: Mayor

(Title)

8-14-2024

Date

New Mexico Environment Department

Judith L Kahl Digitally signed by Judith L Kahl
Date: 2024.08.16 15:14:22 -06'00'

Judith L. Kahl, P.E., Bureau Chief, NMED Construction Programs Bureau

Signed pursuant to the February 19, 2024 Secretary of Environment Delegation Order

Exhibit 1 – Request for Payment
Not for NMED use. NMED Disbursement Form is below.

STATE OF NEW MEXICO CAPITAL GRANT PROJECT Request for Payment Form Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____
B. Address: _____
(Complete Mailing, including Suite, if applicable)

City, State, Zip
C. Contact Name/Phone #: _____
D. Grant No: _____
E. Project Title: _____
F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____
B. Grant Amount: \$ 0.00
C. AIPP Amount (if Applicable): \$ 0.00
D. Funds Requested to Date: \$ 0.00
E. Amount Requested this Payment: \$ 0.00
F. Reversion Amount (if Applicable): \$ 0.00
G. Grant Balance: \$ 0.00
H. ☐ GF ☐ GOB ☐ STB (attach wire if first draw)
I. ☐ Final Request for Payment (if Applicable)

III. Fiscal Year : 2024 (July 1, 2023-June 30, 2024)
(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or Fiscal Agent (if applicable)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ Fund No.: _____ Loo No.: _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

September 2014

Exhibit 2 – Notice of Obligation
Not for NMED Use, Contact Project Manager

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Project Manager

FROM: Grantee Entity: _____

Official Representative: _____ Signature

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: \$ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Project Manager

Signature: _____

Date: _____

1. Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damage; other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

New Mexico Environment Department (NMED)
Capital Appropriations Certification Document
Article IX. A. (ii) and (iii)
T OR C WATER DISTRIBUTION LINE RPLC - SAP 24-I2460-GF

Payment Request No _____

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU
NMED DISBURSEMENT REQUEST
SPECIAL APPROPRIATIONS PROGRAM (SAP)

A. NAME OF ENTITY _____
B. PROJECT NUMBER _____

C. DISBURSEMENT REQUEST NUMBER _____
D. GRANT AMOUNT _____

	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees	\$ 0.00	\$ 0.00	\$ 0.00		\$ 0.00	\$ 0.00		
Other Professional	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Service Fees	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Inspection Fees	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Property Acquisition	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Construction Cost	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Planning Cost	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Equipment	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Other Costs (specify)	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
Contingencies	\$ 0.00		\$ 0.00		\$ 0.00	\$ 0.00		
TOTAL	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.				☐	Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.			
Certification: Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.								
Reporting Certification: I hereby certify to the best of my knowledge and belief, that the database reporting is up to date; to include the accuracy of the expenditures and grant balance, project status, project phase, achievements and milestones, and in compliance with Article VIII of the Capital Outlay Grant Agreement.								
Signature of Official Representative:		Typed or Printed Name:		Phone:		Date:		
X								

A RESOLUTION AUTHORIZING THE ASSIGNMENT OF AUTHORIZED OFFICER(S) AND AGENT(S)
Resolution 12 24/25

Whereas, the City Commission of the City of Truth or Consequences of Sierra County of the State of New Mexico shall enter into a Grant Agreement with the State of New Mexico Environment Department, and

Whereas, the Agreement is identified as Project Number SAP 24-12460-GF

NOW THEREFORE, BE IT RESOLVED by the named applicant that:

Rolf Hechler, Mayor, or successor is authorized to sign the Grant Agreement for this project, and

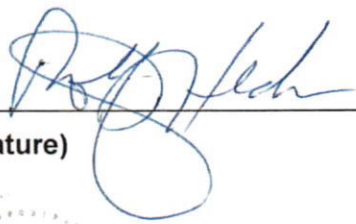
Angie Gonzales – City Manager and Traci Alavarez – Assistant City Manager, or successor is the OFFICAL REPRESENTATIVE(S) who is authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements (Project Description, Disbursements and to act as the project contact), and

Traci Alavarez, Assistant City Manager, or successor is the Capital Projects Monitoring System (CPMS) contact who is designated to update the CPMS database monthly per Article VIII. A. of the Intergovernmental Grant Agreement.

Traci Alvarez - Assistant City Manager, or successors is the CONTACT who is designated to receive Notice of Obligations (NOO□S).

PASSED, APPROVED, AND ADOPTED: August 14th, 2024

Rolf Hechler, Mayor, City of Truth or Consequences, NM



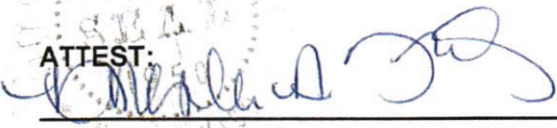
(Signature)

August 14, 2024

Date

(SEAL)

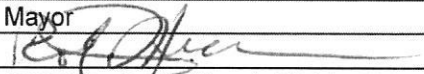
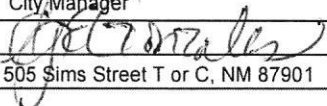
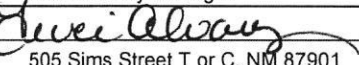
ATTEST:



(Municipal Clerk)

Name of Grantee: T OR C WATER Project Number: SAP 24-I2460-GF

Current Authorized Signatures (submit with Signature Resolution, update when necessary)

Authorized to Sign Agreement			
Name	Rolf Hechler	Name	
Title	Mayor	Title	
Signature		Signature	
Address	505 Sims Street T or C, NM 87901	Address	
Email	rhechler@torcnm.org	Email	
Phone	575-894-6673	Phone	
Official Representatives authorized to sign Disbursement Requests and all other documents.			
Name	Angie Gonzales	Name	
Title	City Manager	Title	
Signature		Signature	
Address	505 Sims Street T or C, NM 87901	Address	
Email	agonzales@torcnm.org	Email	
Phone	575-894-6673	Phone	
Alternate Official Representative, to sign Disbursement Requests and all other documents and act as the Point of Contact.			
Name	Traci Alvarez	Name	
Title	Assistant City Manager	Title	
Signature		Signature	
Address	505 Sims Street T or C, NM 87901	Address	
Email	talvarez@torcnm.org	Email	
Phone	575-952-0565	Phone	
Designated Agent or Employee that will make monthly CPMS updates			
Name	Traci Alvarez	Name	
Title	Assistant City Manager	Title	
Signature		Signature	
Address	505 Sims Street T or C, NM 87901	Address	
Email	talvarez@torcnm.org	Email	
Phone	575-952-0565	Phone	
Notice of Obligations (NOO's)			
Name	Traci Alvarez	Name	
Title	Assistant City Manager	Title	
Signature	No Signature Required	Signature	No Signature Required
Address	505 Sims Street T or C, NM 87901	Address	
Email	talvarez@torcnm.org	Email	
Phone	575-952-0565	Phone	

**ATTACHMENT B
TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY**

ARTICLE 1 **REVIEW**

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

- A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project for the creation of a notice of obligation. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.
- B. If grant funds are used for construction, a site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.
- C. If grant funds are used for construction, the Grantee will submit notice of the award and a copy of the executed construction contract documents.
- D. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.
- E. All daily construction inspection reports shall be made available to the NMED upon request.
- F. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

ARTICLE 2 **NMED OVERSIGHT**

NMED oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 **CLOSEOUT**

- A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.
- B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.
- C. If the grant funds are used for construction, final payment will be made after the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:
 - i. A certificate of substantial completion including punch list items.
 - ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.
 - iii. A written consent of the surety, if any, to final payment.
 - iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.
 - v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.
 - vi. Certification letter of project acceptance by the Grantee and the Grantee's project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.
 - vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: H.2

SUBJECT: Discussion/Action: Change Order PO 82941 J & H Services – Shovel Ready Water Project

DEPARTMENT: Community Development

DATE SUBMITTED: December 11, 2025

SUBMITTED BY: Traci Alvarez

WHO WILL PRESENT THE ITEM: Traci Alvarez

Summary/Background:

The increased cost will provide the following services:

- Additional funds in the materials testing allowance to ensure pipe is properly bedded and installed for longevity. (Additional testing is needed due to the changing soil conditions).
- This will also add an allowance to installation of InstaValves to maintain continuous water service and minimize system disruptions when shutdowns are not feasible or are operationally constrained.

Additional costs fall within the allowable project grant funds and are time and materials based.

Recommendation:

Approve Change Order request to add additional funding to PO 82941 J & H Services for the Shovel Ready Water Project

Attachments:

- Change Order Request
-

Fiscal Impact (Finance): Yes

\$115,000.00 Grant Funds

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

Approved For Submittal By: ☐ Department Director

Reviewed by: ☐ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 2-25-26

CHANGE ORDER NO.: 1

Owner: The City of Truth or Consequences Owner's Project No.: 2025-09-007
 Engineer: Wilson & Company, Inc. Engineer's Project No.: 2500015900
 Contractor: J&H Services, Inc Contractor's Project No.:
 Project: City of Truth or Consequences Shovel Ready Water Projects 1
 Contract
 Name: City of Truth or Consequences Shovel Ready Water Projects 1
 Date Issued: 02/05/2026 Effective Date of Change Order: 02/05/2026

The Contract is modified as follows upon execution of this Change Order:

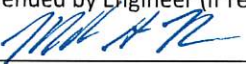
Description:

Increase the Materials Testing Allowance (Line Item 7 of the agreement) by \$50,000 to address additional testing and inspection services required due to the overall size, sequencing, and anticipated production rates of the waterline installation project. This adjustment ensures adequate quality assurance coverage and reduces the risk of delays, and potential rework without changing project scope or design intent.

Additionally add Line Item 9b InstaValve Allowance to the Agreement with a value of \$65,000 for the potential use of InstaValves or similar engineer approved devices to facilitate pressurized connections during waterline construction. The allowance is included to maintain continuous water service, minimize system disruptions, and support efficient construction sequencing where shutdowns are not feasible or are operationally constrained. Work performed under this allowance shall be governed by Section 01 0200 of the project manual.

Attachments: None

Change in Contract Price		Change in Contract Times [State Contract Times as either a specific date or a number of days]	
Original Contract Price (w/o NMGR):		Original Contract Times:	
\$ 5,319,894.00		Substantial Completion: 370	
		Ready for final payment: 400	
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order]: N/A		[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order]: N/A	
\$ 0.00		Substantial Completion: 0	
		Ready for final payment: 0	
Contract Price prior to this Change Order:		Contract Times prior to this Change Order:	
\$ 5,319,894.00		Substantial Completion: 370	
		Ready for final payment: 400	
[Increase] [Decrease] this Change Order:		[Increase] [Decrease] this Change Order:	
\$ 115,000.00		Substantial Completion: 0	
		Ready for final payment: 0	
Contract Price incorporating this Change Order (w/o NMGR):		Contract Times with all approved Change Orders:	
\$ 5,434,894.00		Substantial Completion: 370	
		Ready for final payment: 400	

	Recommended by Engineer (if required)	Authorized by Owner
By:		
Title:	Project Manager	
Date:	2/5/2026	
	Authorized by Owner	Approved by Funding Agency (if applicable)
By:		
Title:		
Date:		



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: H.3

SUBJECT: Approval of the Biennial Memorandum of Understanding (MOU) between MainStreet and the City of T or C.

DEPARTMENT: City Manager's Office

DATE SUBMITTED: February 19, 2026

SUBMITTED BY: City Manager's Office

WHO WILL PRESENT THE ITEM: City Manager Whitehead

Summary/Background:

This is a biennial agreement (MOU) with MainStreet Truth or Consequences to enhance the economic development of downtown Truth or Consequences.

Recommendation:

Approval of MOU

Attachments:

- MOU
- .

Fiscal Impact (Finance): N/A

Legal Review (City Attorney): N/A

Approved For Submittal By: ☒ Department Director

Reviewed by: ☐ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

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Continued To: [Click here to enter a date.](#) Referred To: [Click here to enter text.](#)

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CITY OF TRUTH OR CONSEQUENCES

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Reviewed by: ☐ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

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File Name: CC agendas 2-25-26



**NEW MEXICO
MAINSTREET™**
ENGAGE PEOPLE • REBUILD PLACES
REVITALIZE ECONOMIES

Biennial Memorandum of Understanding (MOU)

July 1, 2026 – June 30, 2028

Between

New Mexico MainStreet Program,

City of Truth or Consequences and MainStreet Truth or Consequences

The State of New Mexico's Economic Development Department seeks to increase the number of jobs and businesses, sustain and expand existing businesses, mitigate commercial leakage, support local entrepreneurs in start-ups, and improve property values within traditional and historic commercial districts. To that end, it has dedicated resources, professional assistance, and services to partnering municipalities and local MainStreet organizations representing stakeholders within the designated commercial district through the New Mexico MainStreet (NMMS), New Mexico Arts & Cultural Districts (ACD), and New Mexico MainStreet Project-Based Initiative programs which include: Frontier and Rural Communities Initiative (FRCI), Native American Communities Initiative (NACI), and Urban Neighborhood Commercial Corridors (UNCC). The partners of this Biennial Memorandum of Understanding (MOU) agree to dedicate collaborative resources, adopt local economic growth and revitalization tools, and establish economic development funding for operations and program implementation to restore economic vitality within the MainStreet economic redevelopment district.

New Mexico MainStreet is a designated "Main Street America" State Coordinating Program. Main Street America (MSA) is a program of the nonprofit National Main Street Center, Inc. (NMSC), a subsidiary of the National Trust for Historic Preservation. The New Mexico Economic Development Department (NMEDD) is licensed and accredited annually to administer the **NMSC's Main Street Approach™** to downtown revitalization. It does this through the development of "Economic Transformation Strategies" that are implemented through comprehensive work in four broad areas known as the **Four Points: Economic Vitality, Design, Promotion, and Organization.**

Through the execution of this biennial MOU, the New Mexico MainStreet program establishes an economic development partnership with local, eligible communities. NMEDD, by New Mexico State Statute (New Mexico MainStreet Act 3-60B-1 to 3-60B-4 NMSA 1978, as amended 2013, and the Arts and Cultural District Act 2007), is authorized to select local partners to participate in the New Mexico MainStreet's program based on the standards and principles set forth by the MSA/NMSC when resources and legislative appropriation allows. Local partners (the local revitalization organization and the local governing body), join their resources (human, social, and financial) to directly support the economic development of the district.

As a Main Street America State Coordinating Program, NMMS provides local MainStreet organizations and their local government partners with resources, training, and technical services that enhance local culture and heritage,

and build the economic vitality of each participating community's downtown, village plaza, town center, courthouse square, historic commercial corridor, or traditional neighborhood business district.

The local government partner (municipal, county, or tribal government) financially supports community economic development work within the dedicated MainStreet district for both operations and program implementation through a service contract with the local, state-designated MainStreet organization. Since the NMMS program and its designation of local partners are established by state statute, and with the understanding that the service contract binds the local MainStreet organization to the implementation of economic development projects which have a fair-market value in exchange for funds received, local government partners remain in compliance with the anti-donation clause of the New Mexico Constitution.

The local MainStreet organization is an economic development organization comprised of district and community stakeholders, whose programs, projects, and activities enhance the local downtown economy and contribute to the quality of life of its citizens. The organization builds local partnerships to leverage resources and buy-in for the revitalization of the district.

This MOU commits partners to the criteria defined in New Mexico MainStreet Program Guidelines (Attachment 1).

This MOU covers a period of two (2) years beginning July 1, 2026. Once fully executed by all parties on the signature page below, it replaces any previous Letters of Agreement, Letter of Understanding, or MOU related to the NMMS program of the NMEDD.

I. PARTICIPATION AND COMMITMENT UNDER THIS MEMORANDUM OF UNDERSTANDING

The local Governing body of City of Truth or Consequences and the MainStreet Truth or Consequences agree to abide by the eligibility and participation requirements as set forth below. The local governing body's official representative and the steering committee or Board of the local MainStreet program have read and understand the Accreditation requirements of the NMMS Program and the MSA "Accreditation Standards" as set forth in Attachment 1.

II. REQUIREMENTS OF THE LOCAL MAINSTREET ORGANIZATION-- MAINSTREET TRUTH OR CONSEQUENCES

- A. Provide community economic growth revitalization services to the property and business owners and residents of the district through the Main Street Approach™, and in alignment with the guidelines of the MSA/NMSC and locally-established Economic Transformation Strategies (ETS).
- B. The organization and local government partner have a fully executed Memorandum of Understanding (MOU) with the Economic Development Department.
- C. The organization has a separate annual contract of services with the local government partner(s) (municipality, county, and/or tribal government) to implement community economic development initiatives within the designated MainStreet and/or Arts & Cultural District. The organization must supply NMMS with a copy of the executed service contract annually or whenever service contract is renewed.
- D. Work with the local government partner(s) (municipal, county, or tribal government) to ensure that appropriate financial revitalization tools, created through state statute for economic development (inclusive of any statutory changes), are adopted by the local government partner for the MainStreet District. These tools may include the Local Economic Development Act (LEDA), a Metropolitan Redevelopment Area (MRA), District Master Plan, and/or Cultural Economic Development Plan, and related finance mechanisms, such as Tax Increment Finance District (TIF), a Tax Increment Development District (TIDD) and/or a Business Improvement District (BID).
- E. Maintain compliance with all annual nonprofit registration and reporting requirements of the New Mexico Secretary of State's Corporations Bureau, the New Mexico Attorney General's Office (Charitable Organizations Division) and Internal Revenue Service (IRS). The organization files all compliance and related documents to the NMMS Digital Dashboard.
- F. In partnership with the local government partner(s), maintains the minimum required operating budget relevant to the size of the community, neighborhood or district served (Attachment 1, Table 1).

- G. If established as an independent nonprofit corporation, the organization must have a Board of Directors with oversight of the organization's performance.
 - 1) The Board of Directors agrees to raise additional funds as needed to meet minimum operation budgets for Affiliate and Accredited organizations per the specifications in Attachment 1, Table 1.
 - 2) The organization must maintain an adequate budget to support training for staff and Board members in nonprofit management and leadership and ensure staff and Board attendance requirements are met.
- H. Establish three (3) NMMS approved Economic Transformation Strategies (ETS) based on adopted economic development plans for the district, implement the work of the *Main Street Approach*[™], and provide evidence of annual progress towards implementation.
 - 1) Economic Transformation Strategies should be developed in consultation with and input from district stakeholders and local government partners.
 - 2) One (1) of the three (3) ETS's should be dedicated to organizational capacity-building activities that directly relate to the organization's/district's specific economic development goals.
 - 3) The organization is required to have a written work plan adopted by the Board of Directors that reflects projects and activities that utilize each of the MainStreet Four Points towards realization of outcomes of the three (3) Economic Transformation Strategies.
- I. Adopt and abide by the following organizational policies as recommended by the IRS and the New Mexico Attorney General's office:
 - 1) Conflict of Interest policy: All members of the Board of Directors or Steering Committee must sign a Conflict-of-Interest Disclosure statement in accordance with the adopted Conflict of Interest policy,
 - 2) Records and Retention and Destruction policy,
 - 3) Whistleblower Protections policy,
 - 4) Fiscal Controls/Financial Management policy, and
 - 5) Non-discrimination/Non-harassment policy.
- J. Upon revision to the local MainStreet organization's operational bylaws and/or amendment of its Articles of Incorporation, the local organization will provide NMMS with updated copies.
- K. Hire an Executive Director to oversee day-to-day operations of the nonprofit (see Attachment 1, Table 1), to provide outreach and support to the MainStreet District's constituents, attend local and NMMS-produced required meetings and trainings and support the Board and its committees in implementing the goals, projects, and activities outlined in Board-adopted ETS's.
 - 1) The Board of Directors provides the Executive Director with a written job description; an appropriate annual staff work plan based on the organization's annual work plan; and at minimum an annual job performance review.
 - 2) The Board of Directors ensures the Executive Director has an office equipped to conduct the work of the program.
 - 3) The Board of Directors maintains adequate funding for the Executive Director's expenses in building skills, knowledge and expertise to assist the organization through the trainings and programs offered by NMMS and Main Street America.
- L. Meet all MSA Accreditation Standards needed to maintain status as a Main Street America Affiliate or Accredited program. Provide evidence of annual compliance with all programmatic requirements of the NMMS program including legal compliance documents, annual work plans, operating budgets, assessment surveys, progress reporting and adoption of required policies.
- M. Meet all requirements for reporting NMMS reinvestment statistics.

- 1) The organization agrees to submit Quarterly Reports to NMMS as established by the state legislature, tracking performance measures for the program. Reports are submitted according to the following schedule:
 1. The First Quarter Report, July 1 through September 30 is due October 1.
 2. The Second Quarter Report, Oct 1 through December 31 is due January 1.
 3. The Third Quarter Report, January 1 through March 31 is due April 1.
 4. The Fourth Quarter Report, April 1 through June 30 is due July 1.
- 2) The organization ensures the timely filing of all other reports and surveys required by Main Street America/National Main Street Center, the State Legislature, the NMEDD, and, as required by local governmental partners.
- N. Staff and Board members must participate in an annual NMMS program review and accreditation process to review organization and staff performance and qualification for Main Street America Accreditation.
- O. Notify NMMS of any changes to contact information for the local program office, Executive Director, Board President, Board Members and Committee Chairs.

III. REQUIREMENTS OF THE LOCAL GOVERNMENT PARTNER – CITY OF TRUTH OR CONSEQUENCES

The Main Street Approach™ offers community-based revitalization initiatives with a practical, adaptable framework for downtown transformation that is easily tailored to local conditions. The Main Street Approach helps communities get started with revitalization and grows with them over time but also requires a cooperative, working partnership of the public and private sectors to succeed.

With the execution of this MOU, the NMMS program requires each local MainStreet program to have in place a resolution of financial support adopted by the local government stating its support and funding commitment to the local MainStreet organization. A copy of the annual scope of services agreement or service contract should be delivered to the NMMS office as a condition of receiving services or funding from NMMS. Failure to adopt such resolution of financial support, or to provide the required financial resources, may result in the suspension of the services provided by NMMS and designation of the local organization as "inactive."

- A. NMMS requires the local government partner to enter into an annual service contract (or similar procurement mechanism in accordance with local policies and standards) for such financial support based on the adopted District Cultural Economic Development Plan, District Master Plan or Metropolitan Redevelopment Area Plan and the adopted ETS's, with the local MainStreet organization.
 - a. Contracts should specify the commitment of resources in accordance with the *New Mexico MainStreet Program Guidelines* (minimum funding contributions by the local government partner are described in Attachment 1, Table 1) and shall include deliverables and/or services relevant to the revitalization of the downtown MainStreet District and/or Arts & Cultural District under the specifications of an adopted Cultural Economic Development Plan, District Master Plan or Metropolitan Redevelopment Area Plan for the District(s) and in alignment with the local MainStreet programs selected ETS's.
- B. Coordinate planning and implementation of revitalization projects through designated/appointed liaisons (local government Manager, Administrator, or Planning Director) that can also be involved and provide feedback on the development and adoption of the local MainStreet organization's Economic Transformation Strategies.
- C. Where applicable, adopt appropriate ordinances, tools (LEDA, etc.), plans (District Cultural Economic Development Plan, District Master Plan or Metropolitan Redevelopment Area Plan) and include projects on local Infrastructure Capital Improvement Plans (ICIP) to support the district revitalization. The local government partner will dedicate economic development funding to priority economic development projects identified in adopted ordinances, tools, and plans, and agrees to administer state and federal funds with the MainStreet organization partner.

- D. Partner in public infrastructure reinvestment in the district by administering funds in a timely manner, coordinating projects, and managing capital outlay or other state or federal funds dedicated to MainStreet revitalization projects.
- E. Assist the MainStreet and/or Arts & Cultural District organization, where applicable, with collection and dissemination of relevant information, plans and statistics that support the district economic revitalization or reporting to the New Mexico State Legislature through the NMMS program.

IV. REQUIREMENTS OF THE NEW MEXICO MAINSTREET PROGRAM

NMMS, in consideration of financial resources established annually through the New Mexico State Legislature, will provide the following services and resources to designated MainStreet communities (inclusive of the local government partner, local MainStreet organization, and businesses/property owners within the MainStreet district):

- A. Through its staff or contractors, provide technical assistance (at no cost to the local program/community) relevant to the *Main Street Approach*™ and other commercial district economic growth, revitalization, and management topics. Each local organization may request services from NMMS, through submission of a Service Request Form to the NMMS Director.
- B. Provide trainings, institutes, workshops, and conferences to support the community revitalization work of organizations and local government partners, and the professional development of local MainStreet Executive Directors and Board Members, including Executive Director State-Certification.
- C. Conduct a MainStreet Program Annual Review & Accreditation Process for the local MainStreet organization, a comprehensive assessment of the program's accomplishments under the Main Street Approach™ with recommendations required of the organization as a State-Designated Revitalization Partner.
- D. Seek, manage, and coordinate public resources (capital outlay, public infrastructure, or other state/federal funds) and partnership grants for the implementation of local revitalization projects.
- E. Supply Main Street America network membership dues and discounted registration fees for training, institutes, workshops, and conferences, as funding is available.

V. SUBLICENSES

Designated Main Street America Affiliate and Accredited Programs must sign an annual sublicensing agreement established by Main Street America and implemented through the NMMS State Coordinating Program. The sublicensing agreements establish guidelines for participation and use of Main Street America Logos and Branding.

VI. MAIN STREET AMERICA ACCREDITATION

Designated New Mexico MainStreet organizations can apply for Main Street America Accreditation on an annual basis during the MainStreet Program Annual Review. Local organizations participating in the Accreditation Process must show successful implementation of their associated Four-Point projects toward the realization of their Economic Transformation Strategies, tracking and submitting their performance measures via Quarterly Reports, submitting all required documents and information on the online Main Street America Accreditation Platform, and meeting the Standards of Performance established by MSA (Attachment 1, Section IV, C).

VII. NONCOMPLIANCE

An organization that is unable to meet its programs requirements, particularly meeting minimum budget and staffing, and does not maintain its agreements with local government, or does not follow the *Main Street Approach*™ may lose its MainStreet designation and access to NMMS services and resources will be suspended. The Economic Development Department may also notify programs of termination of the MOU at the New Mexico MainStreet Director's recommendation. Upon cancellation of the MOU, NMMS will no longer provide services to the organization and local government partner, and they will be ineligible to apply for NMMS funding opportunities. The

organization may be further prohibited from using the Main Street America name, a trademark of the National Main Street Center, Inc. Inactive programs must reapply to NMMS for designation through the Project-Based Initiatives and NMMS Accelerator Process.

VIII. AGREEMENT

The parties hereunder do mutually agree that they have read and fully understand the obligations and responsibilities in operating as a partner with the New Mexico Economic Development Department's New Mexico MainStreet program as a MainStreet and/or Arts & Cultural District as stated herein and in Attachment 1 (*New Mexico MainStreet Program Guidelines*) accompanying this MOU. The parties further agree to abide by the terms of this MOU, implementing it to the best of their ability, with the assistance of services and resources (when available) provided through the New Mexico MainStreet program, and in accordance with the *Main Street Approach*™ as defined by Main Street America/National Main Street Center.

The local MainStreet organization and/or Arts & Cultural District (if applicable), local government partner and New Mexico MainStreet program hereby mutually agree to support the revitalization of the designated MainStreet and/or Arts & Cultural District under the specifications listed herein and in Attachment 1 (*New Mexico MainStreet Program Guidelines*) accompanying this MOU.

We do hereby sign:

On behalf of the New Mexico MainStreet Program, a program of the New Mexico Economic Development Department:



Director, New Mexico MainStreet Program

1/26/2026

Date

On behalf of the Local MainStreet Organization:

President of the MainStreet Truth or Consequences

Date

On behalf of the Local Government Partner:

Mayor/Manager/Representative of City of Truth or Consequences

Date

Please enclose the annual resolution of the City Council, County Commission or Tribal Council identifying financial support for the MainStreet organization. Also attach any other working agreements or contracts between the City of Truth or Consequences and the MainStreet Truth or Consequences.



NEW MEXICO MAINSTREET™

ENGAGE PEOPLE • REBUILD PLACES
REVITALIZE ECONOMIES

Attachment 1: New Mexico MainStreet Program Guidelines

for July 1, 2026 through June 30, 2028

I. Background

***Mission:** The New Mexico MainStreet Program fosters economic development in the state by supporting local MainStreet/Arts & Cultural District revitalization organizations and their local government partner in their economic work in downtowns and adjacent neighborhoods. The Program provides resources, education, training, and services for asset-based economic growth that builds local knowledge and skills based on the Main Street Approach™, which preserves and enhances the built environment, supports district businesses and entrepreneur development, and conserves and interprets local culture and heritage resulting in increased economic vitality of each participating local MainStreet district.*

New Mexico MainStreet is a designated "Main Street America" State Coordinating Program. Main Street America is a program of the nonprofit National Main Street Center, Inc., a subsidiary of the National Trust for Historic Preservation. The New Mexico Economic Development Department is licensed and accredited annually to administer the MSA/NMSC's **Main Street Approach™** to downtown revitalization. It does so through the development of "Economic Transformation Strategies" that are implemented through comprehensive work in four broad areas known as the **Four Points**: *Economic Vitality, Design, Promotion, and Organization*.

NMMS is delegated by state statute (Main Street Act, NMSA 1978, 3-60B-1 to 3-60B-4 and the Arts and Cultural District Act, NMSA 1978 15-5A-1 to 15-5A-7 NMSA 1978), and through NMEDD, to assist communities in building capacity in community economic development that creates jobs, supports commercial property owners, mitigates leakage of economic resources, grows businesses, encourages and supports entrepreneurship, benefits the local economy, and raises the quality of life for its residents. The NMMS program was launched in 1984 and accepted its first designated organizations in 1985. NMMS is responsible for coordinating and orchestrating resources, services, and professional technical assistance to its organizations via several programs and initiatives. For more information, visit the NMMS website: www.nmmainstreet.org.

II. New Mexico MainStreet and Main Street America Designations

Local New Mexico MainStreet programs are established as public-private, community economic development partnership programs dedicated to revitalization and economic growth of traditional and/or historic commercial centers. Local programs are tiered, based on local capacity and organizational development, and receive resources, technical assistance, and support from NMMS concurrent with their program designation or authorization.

- A. **New Mexico MainStreet Project-Based Initiatives:** When resources are available to add new MainStreet projects or programs, local communities can enter the NMMS Program by participating in one of NMMS's *Project-Based Initiatives* and follow-up participation/acceptance into the NMMS *Accelerator*. Applications

can be submitted on a rolling basis; however, interested communities should contact NMMS Leadership to discuss potential projects, receive preliminary approval, and then apply to receive support when NMMS has the available resources to support the proposed project.

- 1) **Frontier and Rural Communities Initiative (FRCI):** The MainStreet Act was amended in 2013 by the State Legislature to establish the Frontier Communities Initiative administered by NMMS to provide project-based community economic development support for rural communities. The FRCI supports communities under 50,000 in population. The 12 to 18-month affiliation with NMMS through the Initiative focuses on one economic development project within a traditional or historic village or town center. The FCI is not open to communities that already have a MainStreet or Arts & Cultural District Program. The program focuses not only on the proposed project, but it also seeks to renew and build leadership in community economic development. It requires a group of stakeholders working in partnership with a local governing body, however, it does not require a non-profit board and paid staff as is required of designated MainStreet Programs.
- 2) **Native American Communities Initiative (NACI):** Building off the success of the Frontier/Rural Communities Initiative, the NACI was created in 2019 to provide specific project-based community economic development support to New Mexico's indigenous communities where the preservation of tribal culture and political sovereignty create different challenges and opportunities than working in rural economic development in general. The 12 to 24-month affiliation with NMMS through the Initiative focuses on one economic development project within a pueblo, reservation, or village or town center. The NACI is not open to communities that already have a MainStreet or Arts & Cultural District Program. Like the FRCI, NACI focuses not only on the proposed project, but it also seeks to renew and build leadership in community economic development. It requires a group of stakeholders working in partnership with a tribal governing body, however, it does not require a non-profit board and paid staff as is required of designated MainStreet Programs.
- 3) **Urban Neighborhood Commercial Corridors Initiative (UNCCI):** The UNCC Initiative is a new pilot program of the New Mexico Economic Development Department's MainStreet program aimed at providing project-based community economic development support to urban neighborhood commercial corridors located in cities with more than 50,000 in population that may currently not have the capacity or resources to start or operate a full-fledged MainStreet Program. Like the FNAC and NACI Initiatives, the UNCC requires a group of stakeholders working in partnership with a local governing body, however, it does not require a non-profit board and paid staff as is required of designated MainStreet programs. Selected communities receive NMMS professional services and technical assistance to implement and complete a community economic development project within 12 to 18 months.

B. New Mexico MainStreet Accelerator: In 2023, New Mexico MainStreet developed a new pathway for local communities to achieve Main Street designation. Organizations and/or communities interested in becoming a Main Street program must first apply to participate in a NMMS project-based initiative – either a Frontier and Rural Communities Initiative, Native American Communities Initiative, or an Urban Neighborhood Commercial Corridor Communities Initiative. Upon successful completion of a project-based initiative, applicants interested in moving toward MainStreet designation will be invited to submit an application for a second project and development of a Revitalization Action Plan that will include both local priorities and benchmarks established by NMMS to guide the applicants progress toward Main Street designation. Revitalization Action Plans should include actions and projects within each of the four points of the Main Street Approach (Organization, Economic Vitality, Promotion, Design), including actions specific to resource development, such as fundraising/ grantwriting, volunteer recruitment, and securing a MOU/service contract with the local municipality.

Upon successful completion of a second project and the development of a Revitalization Action Plan during their participation in a NMMS Project-Based Initiative, the applicant will be eligible to apply for NMMS Accelerator program designation. As a NMMS Accelerator program, the designee will also receive designation as a Main Street America Affiliate program and will embark on achieving the benchmarks established by NMMS and other requirements contained within this document to move them to the next

level. Over a 12-to-18-month timeframe, NMMS will provide guidance and technical assistance throughout the Accelerator to ensure the designee maintains designation as a Main Street America Affiliate when they complete the process. Local communities participating in the Accelerator must demonstrate progress in the implementation of their action plan and secure a commitment from their local government partner to help achieve their economic development goals and pass a resolution of support to provide minimum required funding through a service contract when they complete the process. Upon successful completion of the Accelerator process the organization will begin participating in the Annual MainStreet Program Review & Main Street America Accreditation Process where they will be eligible to receive MSA Accredited status based on their prior 12-month performance and meeting the baseline requirements and six standards of performance established by MSA.

C. Designation as Main Street America Affiliate™ or Accredited™ Program: NMMS, as a licensed and accredited State Coordinating Program, annually awards local Mainstreet programs with a Main Street America Affiliate™ or Main Street America Accredited™ designation based on progress in the prior 12 months toward meeting Main Street America's Performance Requirements and Operating Standards (outlined in Section IV, C of this document).

- 1) **Main Street America Affiliate™** status is for revitalization programs or organizations that have demonstrated a commitment to the comprehensive Main Street Approach™ to District revitalization, have completed the NMMS Accelerator benchmarks, and are building organizational capacity using economic transformation strategies that engage the four points to develop their goals and annual implementation plans. Affiliate Programs are building or re-establishing their operational capacity and their programmatic engagement with demonstrable economic performance toward completing their ETS goals and working to attain Main Street America Accredited designation.
- 2) **Main Street America Accredited™** status is for programs or organizations that demonstrate success in planning, implementing, and measuring successful Economic Transformation Strategies utilizing the Main Street Approach™. Accredited programs have fully engaged Boards, committees or task groups working in all Four Points and a paid Executive Director commensurate with the requirements listed in Table 1 & Table 2 (*Budget and Staffing*) based on the size of the community. Accredited programs establish, monitor, and report rigorous outcome performance measurements and document achievement under all Standards of Performance established by Main Street America.
- 3) **Sublicensing Agreements for Main Street America Affiliate and Accredited programs:**
 - i. New Mexico MainStreet organizations designated as a Main Street America Affiliate or Accredited program must sign an annual sublicensing agreement established by Main Street America and implemented through the NMMS Coordinating Program.
 - ii. The sub-licensing agreements establish guidelines for participation and requisite use of Main Street America Logos and Branding.

D. New Mexico Arts & Cultural Districts Program and Designation: The NM Arts & Cultural Districts Program (ACD), was established by the legislature in 2007 and statutorily attached to New Mexico MainStreet, to assist communities in developing their cultural and creative economy resources to create dynamic and economically vibrant districts. The ACD Program is a joint effort of three state agencies, New Mexico MainStreet, New Mexico Arts Division, and Historic Preservation Division (HPD). The NMMS Director, by statute, serves as the State Coordinator overseeing the ACD program. The New Mexico Arts Commission authorizes new districts, compounds, and institutions based on recommendations from the ACD State Coordinator, and HPD administers the NM State Income Tax Credit for Preservation of Cultural Properties that provides a doubling of the available tax credit when a listed property is located within the boundaries of a State-Authorized ACD.

- 1) **Arts & Cultural District Start-Up Designation:** When state resources allow, municipalities, citizens, designated NMMS programs, or other nonprofit organizations can apply or petition to participate in NMMS's *Creative Economy Jump Start* as the first step toward the *Arts & Cultural District Start-Up Designation*.
 - i. *Creative Economy Jump Start:* The purpose of the *Creative Economy Jump Start* is to work with local Main Street Organizations and non-NMMS communities interested in becoming a NMMS Program to access capacity and identify opportunities with respect to Creative and Cultural Economy work and their potential for designation as a New Mexico State Authorized Arts & Cultural District.
 1. Designated NMMS programs can request to participate in the *Creative Economy Jump Start* by submitting a NMMS Service Request and justification memo outlining the communities creative and cultural assets and potential for designation as a New Mexico State Authorized Arts & Cultural District.
 2. Non-NMMS communities/organizations can apply to participate in the *Creative Economy Jump Start* by applying to NMMS' FRCI, NACI, or UNCCI Project-Based Initiatives.
 - ii. Start-Up Arts & Cultural District Designation:
 1. NMMS Organizations that have successfully completed the initial phases of the *Creative Economy Jump Start* and have effectively documented their potential for State Authorized ACD designation can petition NMMS to enter the ACD Start-Up phase to develop strategies to grow their arts, cultural, and creative economy assets.
 2. When resources are available to add new MS programs, non-NMMS communities that have completed the Creative Economy Jump Start through their participation in one of the NMMS's Project-Based Initiatives and are interested in becoming a NMMS Program with an ACD Designation can apply for participation in a joint/hybrid NMMS Accelerator/ACD Start-Up Process.
 3. ACD Start-Up's must complete the ACD Start-Up Performance Benchmarks that includes organizational, financial, planning, and image development modules that build local capacity, develops local arts and cultural assets, and help develop a cohesive and well-recognized Arts & Cultural district with a high concentration of cultural facilities and programs that serve as the main anchors of economic and destination development. A comprehensive outline of the Start-Up process and list of benchmarks is available for download at www.nmmainstreet.org/resource.
- 2) **State-Authorized Arts & Cultural District Designation:** MainStreet Programs that have completed the ACD Start-Up benchmarks, established arts and cultural assets and programming, have a developed, cohesive, easily recognizable District, and have an adopted Cultural Economic Development Plan can petition the NMMS Director/ACD Coordinator and NM Arts Commission for designation as a State-Authorized Arts & Cultural District. State Authorization:
 - i. Enables the doubling of the state's historic tax credits (up to \$50,000) for rehabilitation of eligible historic commercial properties listed on the State Register of cultural properties within the district's boundary.
 - ii. Enables local MS/ACD program to apply for NMMS Capital Outlay Public Infrastructure projects identified in the adopted Cultural Economic Development Plan.
 - iii. Enables access to NMMS technical assistance to implement arts, cultural, and creative economy projects in the district.
 - iv. Ensures the local ACD district will be included in Statewide branding and marketing of the Districts as an arts and cultural destination.

- v. Through municipal adoption of the Local Economic Development Act (LEDA), qualifying entities under the "cultural facilities" definition can apply for local and state LEDA funds for public/private economic development projects prioritized in the ACD Cultural Economic Development Plan, Master Plan, and/or MRA Plan.
- 3) Start-Up and State-Authorized Arts & Cultural District (ACD) designations are attached to a local MainStreet organization designated by New Mexico MainStreet as an Accredited or Affiliate Main Street America program. These Arts & Cultural Districts are administered by an ACD Coordinating Council that is responsible for developing and implementing Creative Economy projects and activities in the Arts & Cultural District. The ACD Coordinating Council operates under the local MainStreet organizations structure as a Standing Committee or Taskforce and are subject to the policies and procedures of the host organization.

E. *MainStreet programs with Start-Up or State-Authorized Arts & Cultural District (ACD):* In addition to NMMS and National Main Street Operations and Performance Standards (see Section IV. Performance Requirements and Operating Standards), programs with a Start-Up or State-Authorized ACD designation must also meet the following guidelines:

- 1) The organization shall meet all the statutory obligations of the Arts & Cultural District Act (2007).
- 2) The organization shall meet all policy requirements established by the State ACD Council:
 - i. Quarterly/Semi-Annual Reporting
 - ii. Creative economy benchmarks and performance measures
- 3) The organization shall have or will work with their local government partner to complete an ACD Cultural Economic Development Plan adopted by the local governing body.
- 4) MainStreet programs having chosen and received Start-Up or State Authorized ACD designation shall add or dedicate at least one of their ETS's to ACD/creative economy work.
 - i. The ACD Cultural Economic Development Plan will help guide the development of ACD ETS to grow the District's Cultural Economy.
 - ii. Goals of the ETS shall be integrated into the annual work plan and budget of the MainStreet organization.
- 5) Establish and maintain a standing ACD Coordinating Council (Committee or Taskforce) dedicated to implementing ACD/creative economy work:
 - i. The ACD Coordinating Council should include artists, artist organizations, and cultural and creative entrepreneurs.
 - ii. The MainStreet Board is responsible for ensuring adequate staffing, resourcing or support to the ACD Coordinating Council.
 - iii. With the support of staff, the ACD Coordinating Council shall prioritize and implement projects in the Board-adopted ETS's, and in line with the Cultural Economic Development Plan adopted by local government.
 - iv. The Coordinating Council shall contribute to and participate in the annual performance or accreditation reviews conducted by NMMS.
 - v. Please see "*Policy Establishing Guidelines for the ACD Coordinating Council in State-Authorized Arts & Cultural Districts*" for more detailed information.
- 6) ACD staff (and, when possible, ACD Coordinating Council members) shall participate in in NMMS trainings, conferences, and institutes.

III. Economic Transformation Strategies and Community Revitalization

The local MainStreet organization is required to establish and implement three (3) NMMS-approved Economic Transformation Strategies (ETS) for the district based on a market analysis and adopted economic development plans. The local MainStreet organization is expected to engage NMMS, their local government partner, and district stakeholders in the process of developing and adopting their ETS. Of the three ETS, one should be dedicated to organizational capacity building ("Capacity Building Strategy") and is not directly related to specific economic development goals. An annual work plan is developed based on the three (3) ETS. All work in the Main Street Approach™ and Four-Points (Organization, Design, Promotion, and Economic Vitality), should directly support outcomes established under the ETS strategies. Work teams, task forces or committees are established to implement projects that advance each strategy.

The focus of the MainStreet Program Annual Review & Accreditation Process for each local organization will be based on the positive outcomes of the Board and staff in meeting performance metrics in the annual work plan related to each ETS strategy and the engagement of each of the Four Points by the organization in meeting each strategy.

ETS strategies should be concrete, specifically defined, and achievable with the existing resources of the local organization. Local resources include volunteers established as committees/taskforces/work teams, funding, and adopted revitalization and redevelopment tools necessary for successful completion of each of the annual strategies. Requests for NMMS services, resources and support are available to help achieve these annual economic development strategies.

A. Annual strategies are expected to be informed/guided by:

1) For Main Street America Affiliate or Accredited programs, or State Authorized Arts & Cultural Districts:

- i. Input from district stakeholders and local government partners, and District Master Plans, Metropolitan Redevelopment Area Plans, District Cultural Economic Development Plans, and/or Comprehensive Economic Plans adopted by the local government partner.

2) For communities engaged in the New Mexico MainStreet Accelerator or Arts & Cultural District Start-Up:

- i. Input from district stakeholders and local government partners, NMMS Accelerator benchmarks, and related Action Plan or Creative Economy Jump Start Plan
- ii. Other Accelerator or Start-Up benchmarks established by NMMS

B. Based on designation of the local MainStreet and/or Arts & Cultural District organization as a Main Street America Affiliate™, Main Street America Accredited™ program, NMMS will provide professional assistance and support through the Main Street Four-Point Approach® tied to ETS's and annual work plans via a service request form submitted to NMMS. NMMS will work with the local governing body and the local organization to identify and apply for funding for planning and infrastructure/capital investments within the district identified as priority projects in adopted plans. Priority is given to those MainStreet projects on the Infrastructure Capital Improvement Plans; additional bonus points on competitive applications may also be considered.

IV. Performance Requirements and Operating Standards

A. Requirements for Local MainStreet Organizations

Maintaining a Main Street America Affiliate or Accredited Program enables access to additional specialized technical support, incentive programs, and resources, and serves as a pre-requisite to apply for MainStreet Public Infrastructure funds and operations/project funding through NMMS Partners (MFA, NMFA, FundIt, and other federal, state and foundation grantors partnering with NMMS). Maintaining a Main Street America Accredited program also ensures access to scholarships and grants from the New Mexico Resiliency Alliance (NMRA) and its funding partners.

New Mexico MainStreet maintains a digital dashboard (www.nmmainstreet.org/dashboard/login.php) to track annual compliance filings and monitor progress toward State Certification and National Accreditation. Main Street America also has a Main Street Accreditation web-based platform (<https://mainstreetreporting.org/login>). Local MainStreet organizations are responsible for uploading compliance and other required filings on both platforms on an annual basis.

A local MainStreet organization designated by NMMS of the NMEDD must meet or exceed the following requirements to maintain its designation:

- 1) *MOU*: The organization has a fully executed Memorandum of Understanding with the Economic Development Department and Local Government Partner.
- 2) *Scope of Services Contract/MOU/LOA with Local Government Partner*: It is required that the local MainStreet organization have a separate annual contract for services with the local government partner to do community economic development work within the designated district, outlining expectations of the local government partner, and clearly defined deliverables for its financial support of the local MainStreet organization. The organization must provide NMMS with a copy of the executed agreement annually.
- 3) *Resolution of Support and Funding by the Local Government Partner* (City Council, County or Tribal Commission). Each MainStreet and/or Arts & Cultural District program must have in place a biennial MOU with NMEDD's NMMS program and the local governing body, along with an annual/biennial resolution adopted by the local government partner for the term of the MOU stating its support and funding commitment to the local MainStreet organization. If the resolution is for only the first year of this MOU, then a new resolution by the governing body will need to be approved and delivered to NMMS prior to services from NMMS continuing into the second year of the two-year MOU cycle. Failure to adopt such resolution of financial support, or to provide the operational resources to sustain the Public-Private Partnership, may result in the suspension of the services provided by NMMS. The annual funding commitment required of the local government partner is described in Table 1 for FY25 and Table 2 for FY26 below.
- 4) The MainStreet organization is also required to engage in fundraising and resource development activities needed to meet the minimum operational budget requirements for a New Mexico MainStreet/Main Street America Program (Table 1).

Table 1: Budget and staffing requirements for New Mexico MainStreet/Main Street America organizations.

	<i>Rural Community</i>	<i>Small Community</i>	<i>Mid-Size Community or Commercial Neighborhood</i>	<i>Large Community or Urban Program</i>
Population	< 5,000	5,001 - 15,000	15,001 - 50,000	> 50,000
Min. Operating Budget for NMMS/MSA Affiliate Program	\$25,000	\$45,000	\$60,000	\$100,000+
Min. Operating Budget for NMMS/MSA Accredited Program	\$40,000	\$60,000		\$100,000+
Required Contribution to local MainStreet program by Local Gov't Partner	\$26,000	\$46,000	\$52,000	\$79,000
Executive Director Staffing Requirement, MainStreet America Affiliate (hrs/wk)	20	30		
Executive Director Staffing Requirement, Main Street America Accredited program (hrs/wk)	20	40		

NMMS Accelerator and ACD Start-Up process Designate	\$20,000 from local government; no staffing requirement
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*Note: Operating at minimum budget/staffing benchmarks is usually not adequate to advance Four Point projects.

B. Participation Requirements for Local MainStreet/ACD Organizations

The MainStreet/Arts & Cultural District Executive Director and/or appropriate staff should attend NMMS Conferences and Institute training as established by the State Coordinating Program to build their skills and knowledge.

1) Requirements for Executive Directors:

- i. The Executive Director must attend the annual NMMS Conference and NMMS Institute.
- ii. The Executive Director must complete the *NMMS Executive Director Boot Camp and Certification Program* where they will receive one-time training in MainStreet Fundamentals.
 - Executive Directors wishing to substitute equivalent training courses, or to receive a waiver for previously attended trainings, must obtain prior written approval from NMMS and proper documentation must be provided when courses are completed.
- iii. An Executive Director must attend a Main Street America's national "Main Street Now" conference within the first two years of employment and at least once every four years to keep up-to-date on the accomplishments and innovations of other MainStreet leaders nationally.
 - The organization, through reimbursement or other schedule of payment, assumes the costs of the Executive Director's participation in all required trainings.

2) Board President/Board Members:

- i. The local organization Board President is expected to attend one of the following each year: NMMS Conference, NMMS Institute, or national Main Street Now Conference.
- ii. The Board President and other Board members shall attend any required Board member trainings established by NMMS.

C. Main Street America Standards of Performance

- 1) *Main Street America Accreditation*: Consideration for Accreditation by the Main Street America applies only to those local MainStreet organizations implementing their Economic Transformation Strategies, tracking and fulfilling performance measures, and meeting the MSA/NMSC Standards of Performance, listed below. A comprehensive listing of the indicators and scoring process is available for download at www.nmmainstreet.org/resource.
 1. Broad-based Community Commitment
 2. Inclusive Leadership & Organizational Capacity
 3. Diverse and Sustainable Funding
 4. Strategy-Driven Programming
 5. Preservation-Based Economic Development
 6. Demonstrated Impact & Result

V. Resources Provided by New Mexico MainStreet:

NMMS is funded through the New Mexico State Legislature and provides a variety of resources to designated communities including access to professional technical assistance, economic growth and revitalization supports, networking, and education as described in the following pages:

A. Technical Assistance Services

Through its staff or contractors, NMMS will provide technical assistance (at no cost to local program/community) in a variety of subject areas relevant to the Main Street Approach™ to downtown revitalization, an organization's "Economic Transformation Strategies, and their work in the Four Points: Economic Vitality, Design, Promotion, and Organization. Each local organization may request on-site, email, and/or telephone consultation(s) from NMMS. Access to Technical Assistance is initiated through submission of a Service Request Form to the NMMS Director/ACD Coordinator. Upon receiving the service request, the NMMS Director/ACD Coordinator will assign the appropriate Revitalization Specialist(s) to coordinate, design, and delivery of services, on-site visits and/or other communications. Service request forms, along with descriptions of available services are available online at: nmmainstreet.org/resource/programs/.

Technical Assistance services include, but are not limited to:

- Organization: Organizational development consultants provide facilitation in strategic planning, visioning and mission statements, work plan development, resource development, leadership and volunteer development, succession planning, nonprofit management, committee training, staff training, and continuous quality improvement of the program.
- Marketing and Promotion: Promotion, Marketing and Graphic Design specialists offer assistance with image development and branding, marketing strategies, logo design, promotional and collateral materials development, event planning, visual merchandising, media relationships, online/social media, publicity and advertising.
- Economic Vitality: Economists, business, and property development specialists provide technical assistance and training in market analysis, business strengthening and recruitment, real estate development, economic development incentives, revitalization financing tools, placemaking, and program progress and impacts monitoring.
- Architectural and Design Services: Architects and Planners provide conceptual design services for façade improvements, floor plans, parking, landscape, signage and interior improvements.
 - a. Design Intensives: Specialized, local volunteer-driven, on-site design intensives are offered by the NMMS Design Team through application (when available) to the MainStreet Placemaking, and MainStreet Façade Squad, and other architectural restoration.
- Planning and Historic Preservation: Planners and design professionals provide assistance in placemaking, historic preservation, community-based planning processes, streetscape design, vehicular and pedestrian circulation enhancements, parks, way-finding design, district master planning, metropolitan redevelopment plans, urban planning, and zoning.
- Arts & Cultural/Creative Economy Resources Development: Cultural Resource consultants, in partnership with staff and consultants from New Mexico Arts, offer technical assistance and services related to protection, development and promotion of arts and cultural resources, cultural facilities and historic properties to enhance the local creative economy supporting cultural entrepreneurs, creative enterprises and industries.

B. Other Resources

New Mexico MainStreet provides a variety of resources and partnerships to assist local communities and organizations with the revitalization of their traditional or historic commercial district. These include:

- *Trainings, Workshops, Conferences, and Institutes:* Annually, NMMS identifies opportunities for intermediate and advanced-level trainings in specific areas of the Main Street Four-Point Approach® to strengthen and build skills for organizational and municipal leaders and partnering organizations.
 - *Annual NMMS Conference and NMMS Institute*
 - Managing the MainStreet/ACD Nonprofit Corporation training
 - Multi-part series on Grant Writing and Nonprofit Fundraising for local MainStreet leaders
 - *Online trainings:* NMMS provides webinars, videos or other online training opportunities to build capacity of staff, community leaders and organization volunteers in support of the district economic growth and revitalization.
- *NMMS Executive Director Boot Camp and Certification Program:* Executive Directors who successfully complete the Boot Camp and other required trainings shall automatically qualify as a State-Certified Executive Director.
- *Marketing:* NMMS and NMEDD provide statewide marketing opportunities for local MainStreet organizations/districts, initiatives and activities through its websites (www.goNM.biz, www.nmmainstreet.org, www.offtheroadnm.org), social media platforms, e-newsletters, and *Choose MainStreet* marketing campaign.
- *Information and Networking:* Through regular email, list serves, mailings, websites and meetings, NMMS provides timely notice on grant and partnership opportunities, guidance on innovative revitalization tools and techniques, and helps with addressing the multiple challenges that arise during the day-to-day course of each local organization's MainStreet efforts.
- *MainStreet Program Annual Review & Accreditation Process Accreditation Process:* Accreditation by the Main Street America recognizes achievement under the Standards of Performance established by the Main Street America/National Main Street Center, Inc. NMMS conducts an annual accreditation review – a comprehensive assessment of the program's accomplishments under the Main Street Approach® for the previous calendar year. Participation in the Accreditation review is required and the NMMS Director prepares recommendations for Main Street America based on the performance of the previous 12 months. Main Street America Accreditation is also contingent upon meeting all compliance requirements listed in preceding sections.
- *Main Street America/National Main Street Network Membership:* The state program pays each local organization's annual network membership fee to the MSA. Membership benefits include the monthly *Main Street News*, discounted conference and workshop registration fees, access to members-only informational resources on the NMSC website, and member rates on publications.
 - Main Street America Conference – Main Street Now: Annually, NMMS provides discounted basic registration for Main Street America Affiliate and Accredited programs to help each Executive Director attend the Main Street Now conference. Local organizations meeting all annual performance standards for Main Street America Accredited programs are also provided one (1) additional discounted basic registration to the NMSC conference for a member of the Board of Directors when funding is available.
- *MainStreet Public Infrastructure Funding:* MainStreet America Affiliate, MainStreet America Accredited, and State Authorized Arts & Cultural District programs are eligible to apply for NMMS Capital Outlay Public infrastructure funding for priority pedestrian safety upgrades and infrastructure improvements within designated MainStreet Districts
 - NMEDD works with the State Legislature and Governor to appropriate Public Infrastructure funds, which are then awarded on a competitive basis with particular emphasis on construction-ready projects and organizational commitment to leverage such funds for direct economic growth and private sector reinvestment.

- *MainStreet Partnership Grants and Resources:* NMMS works closely with several other state agencies including the Tourism Department, Historic Preservation Division, New Mexico Arts Division, and the Department of Transportation as well as other statewide partnering organizations that share a common vision including the New Mexico Coalition of MainStreet Communities (NMCMS) and the New Mexico Resiliency Alliance (NMRA).
 - The State Coordinating Program also works with statewide nonprofit and corporate funding partner organizations that provide funding opportunities to local MainStreet/ACD programs to access and coordinate resources for district economic development and revitalization projects.



CITY OF TRUTH OR CONSEQUENCES

AGENDA REQUEST FORM

MEETING DATE: February 25, 2026

Agenda Item #: H.4

SUBJECT: Discussion/Action: Approval of a Professional Services Agreement between the City and Jesse Cole 4x4 Services and Consults

DEPARTMENT: City Manager

DATE SUBMITTED: February 19, 2026

SUBMITTED BY: City Manager's Office

WHO WILL PRESENT THE ITEM: City Manager Gary Whitehead

Summary/Background:

Last year, the City approved an agreement with 4x4 Services and Consults to perform essential Water and Wastewater services to ensure compliance with state and federal regulations governing the safe storage, maintenance, and operation of the City's water, wastewater, and related systems. The city wishes to continue working with Jesse Cole under a renewed agreement, which expands the scope of services to include assistance with waterline repairs.

Recommendation:

Approve Agreement

Attachments:

- Agreement
-

Fiscal Impact (Finance): TBD

[Click here to enter text.](#)

Legal Review (City Attorney): Choose an item.

[Click here to enter text.](#)

Approved For Submittal By: ☐ Department Director

Reviewed by: ☐ City Clerk ☐ Finance ☐ Legal ☐ Other: [Click here to enter text.](#)

Final Approval: ☐ City Manager

CITY CLERK'S USE ONLY - COMMISSION ACTION TAKEN

Resolution No. [Click here to enter text.](#) Ordinance No. -

Continued To: - Referred To: -

☐ Approved ☐ Denied ☐ Other: -

File Name: CC agendas 2-25-26

CITY OF TRUTH OR CONSEQUENCES
PROFESSIONAL SERVICES AGREEMENT
CONTRACT #2025-03-005

THIS AGREEMENT is made and entered into on ~~February 26, 2025~~ **March 1, 2026**, by and between the City of Truth or Consequences, a political subdivision of the State of New Mexico, acting by and through its duly elected City Council, hereinafter referred to as "City," and Jesse Cole 4x4 Services and Consults, hereinafter referred to as "Contractor".

SECTION ONE. PURPOSE AND SCOPE OF AGREEMENT

The City shall engage the Contractor to perform necessary water and wastewater services to ensure compliance with state and federal rules and regulations for the safe storage, maintenance, and operations of City water, wastewater, and related services and systems. Under the agreement, Contractor shall provide guidance, prepare, and submit information needed for City to maintain or achieve compliance with statutory and regulatory requirements as required by the New Mexico Environment Department and United States Environmental Protection Agency. Contractor shall represent City in communications with regulatory agencies as needed. The scope of this agreement is further defined in the attached Exhibit A.

The City agrees to engage Contractor to perform the functions and duties assigned pursuant to the terms herein or to the reasonable satisfaction of the City, and to perform such other legally permissible and proper duties and functions as requested by the City.

The contractor agrees to consult and gain approval of the City regarding matters of policy. The contractor will consult with the City Manager. The contractor will consult with the City Attorney regarding legal matters affecting the water and wastewater, with approval from the City Manager.

SECTION TWO. ACCEPTANCE OF TERMS

The contractor accepts the terms of this agreement and will render the services described in Section One and exhibit A, during the term of this agreement, subject to the general supervision and direction of the City Manager's office and specific provisions of New Mexico state law.

The contractor is a contractor with no due process and/or grievance rights. Either party may terminate this agreement at any time with or without cause in compliance with Section 5 of this agreement.

SECTION THREE. COMPENSATION OF CONTRACTOR

The compensation under this contract will not exceed \$60,000.00 (Sixty-Thousand Dollars, not including gross receipts tax, in one year.

City shall compensate Contractor at the monthly rate of **\$1,000.00 (one-thousand dollars)** ~~\$2,500.00 (two-thousand five hundred)~~ Monthly base fee. Base fee is for general consulting fees associated with State of New Mexico and Federal regulation requiring a level three (3) or higher in water and wastewater to operate the department.

Base rate compensation shall cover the following contractual obligations:

- a. One day (1) on site evaluation of all city water and wastewater facilities and operations.
- b. Face-to-face meeting with leadership team to review finds, concerns, and recommendations for monthly work plan.
- c. Ensure compliance with all state and federal requirements.
- d. Represent the City of Truth or Consequences at any inspection, meeting, or seminar that affect the operation of the water/wastewater department.

The contractor may be compensated at an hourly rate of \$75.00 per hour on an emergency call out, not including New Mexico Gross Receipt Tax, payable upon submission of a monthly invoice.

The contractor may perform additional functions and repairs for the city under this contract. Such tasks shall be identified through a task order and approved by the department supervisor and the city manager. Costs are detailed in Exhibit A.

All provisions for the agreement and fee schedule are detailed in Exhibit A.

Emergency calls require approval from the City Manager.

Contractors will not be eligible for employee benefits such as payroll taxes, health insurance, retirement, or any other fringe benefits except as provided herein.

The contractor will not accrue paid leave and is not eligible for overtime, holiday pay, or other paid compensatory hours.

The contractor shall be allowed to operate city-owned equipment while, onsite at the plant only, in the performance of this agreement.

SECTION FOUR. TERM OF AGREEMENT

The terms of this Agreement shall be from March 1, 2026, through June 30, 2027. The procurement code requires that the contract not exceed \$60,000.00 (Sixty-Thousand dollars) each fiscal year.

SECTION FIVE. TERMINATION

This Agreement may be terminated by the city at any time with 30 days written notice. In that event, the city will pay the contractor for services rendered.

The contractor must provide 90 days' written notice to terminate the contract. This time is necessary for the city to identify and engage a new contractor.

SECTION SIX. PROFESSIONAL SERVICES AGREEMENT

This agreement is entered into by the City under the professional services section of the New Mexico Procurement Code. The city has a requirement to hire qualified employees for the position or contract with qualified providers to deliver the critical services necessary to operate a compliant and safe water and wastewater operation.

Professional services" means the services of architects, archeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers,

psychologists, planners, researchers, construction managers and other persons or businesses providing similar professional services, which may be designated as such by a determination issued by the state purchasing agent or a central purchasing office.

SECTION SEVEN. CERTIFICATION

Contractor shall possess all certification necessary to be designated the official operator of the water and wastewater department in accordance with the New Mexico Environment Department. Contractor shall provide all necessary documentation to verify that the contractor has a New Mexico business registration in good standing. The contractor shall maintain a business license from the City of Truth or Consequences. All employees of said contractor shall possess the proper certification(s) to perform the work requested. All certifications and licenses must be filed with the City of Truth or Consequences.

SECTION EIGHT. MODIFICATION

No waiver or modification of this Professional Services Agreement or of any condition of limitation herein contained will be valid unless in writing and duly executed by the City and Contractor.

SECTION NINE. SEVERABILITY

If any of the provisions of this agreement are declared illegal, void, or unenforceable, the remaining provisions will not be affected and will remain in full force and effect.

SECTION TEN. ASSIGNMENT

The contractor may not assign any right accruing under or interest arising from this agreement without the express written consent of the City. In the event of any assignment, the assignee will assume all obligations and liabilities of Contractor.

SECTION TEN. GOVERNING LAW

This contract shall be governed by the laws of the State of New Mexico.

SECTION ELEVEN. CONFLICT OF INTEREST

Contractor warrants that they represent no clients with interests adverse to the City and will consult without conflict of interest.

SECTION TWELVE. COMMUNICATIONS PROTOCOL

The primary point of contact between the City and the contractor shall be the City Manager. The contractor shall be authorized to direct city employees to conduct necessary activities that are consistent with the operation of a water and wastewater department. The contractor shall report, in writing, the directions and outcomes expected.

SECTION THIRTEEN. INSURANCE

Throughout the duration of this Agreement, Contractor will maintain a liability insurance policy with minimum coverage of \$1,000,000.00. The contractor will deliver evidence of sufficient coverage and will notify the City if there are any changes in coverage.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by persons here represented and warranted to be authorized to bind the parties to this Agreement.

Exhibit A

1 workday per month for the base fee of \$1000.00 (one-thousand dollars).

Consulting fee encompasses the utilization of the contractor's level 4 certification necessary to operate the water and wastewater treatment facility.

Consultant shall perform not less than one (1) day, eight hours of on-site operation evaluation and compliance survey.

The consultant shall report the findings to the water/ wastewater supervisor and the city manager.

The consultant shall provide 8 hours of staff training, preparedness and evaluation to assist in upgrading staff and administration included in the base fee.

The contractor shall be authorized to perform additional water and wastewater functions and necessary to help maintain a health system. Those tasks shall be identified in a task order developed by the supervisor or the city manager.

Additional fees will be charged at the following rate:

- A. \$75.00 per hour for the consultant's time.
- B. \$75.00 per hour for the consultant's staff rate (up to two employees).
- C. Market value for equipment necessary to facilitate the repair.

Contract time shall begin when contractor or employee is on site.

Work Plan

Develop a monthly work plan for the staff to maintain a safe and compliant working environment at the wastewater plant.

Develop and maintain a plant safety program compliant with state and federal regulations.

The contractor will work side-by-side with staff during onsite days to complete work as identified by the contractor.

The contractor shall participate in the annual budget process.

City staff will continue to perform all testing, report generation and submission.

The contractor shall review all reports prior to submission.

The contractor shall develop a monthly training plan for the staff.

The contractor shall make recommendations to improve or change the operating policies.

The contractor will utilize his expertise and planning for both the water department and wastewater department. The focus shall be on the wastewater plan.

The contractor shall not be limited by the wording in the exhibit. The contractor will perform all duties necessary to achieve the goals of the agreement or any other activities as directed by the City Manager that are consistent with water and wastewater operations.

Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To: Jesse Cole 4x4 Services and Consults

Address:

By: _____ Date: _____
Jesse Cole, Consultant

By: _____ Date: _____
Gary Whitehead, City Manager

By: _____ Date: _____
Carlos Miyagishima, Chief Procurement Officer

Attest:

Angela Torres, Clerk-Treasurer